IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 292 OF 2009

M/S. MAHA SEER HOTEL AND RESORTS PVT LTD ... Petitioner

Versus

UNION OF INDIA THROUGH SECRETARY AND 3 ORS., ... Respondents

Mr. P. S. Rao, Advocate for the Petitioner.
Mr. C. A. Ferreira, Asst. Solicitor General for respondent no.1.
Mr. S. S. Kantak, Advocate General with Ms. S. Mordekar, Addl. Government Advocate for the Respondent nos. 2 and 3.
Ms. Norma Alvares, Advocate for Respondent no.4.

Coram:- B. P. DHARMADHIKARI & U. D. SALVI, JJ.

Date:- 6th July, 2009

ORAL ORDER

By this Petition, petitioner is seeking a writ against the respondent no.3 to forward his proposal for development i.e. construction of Hotel for Environmental Clearance to respondent no.1, which is sought in background of Judgment dated 13.10.2006 delivered by this Court in Writ Petition no. 422/1998 and 99/1999. The operative part (D) and (E) therein are important for consideration of present controversy. The same read as under :

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilized for such construction activities.

(E) Till and until the survey and inquiry is completed, as

directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/or renovation of the existing houses.

2. Petitioner states that their proposal for development is approved by respondent no.3 vide subject no. 46.4.2 but then because of the above mentioned Judgment, they have expressed inability to forward it to respondent no.1. Learned Counsel for petitioner states that the proposal, therefore, should be directed to be forwarded to respondent no.1 so that it can be processed further in accordance with law and all objections to that proposal can be appropriately considered by respondent no.1.

3. The respondent nos. 1, 2 and 3 have not filed any reply. Respondent no.4, the petitioner in Writ Petition No. 422/1998, has contended that the Hotel is coming up in CRZ-I area and for that purpose, our attention is invited to Environmental Impact Assessment of said Hotel of petitioner particularly clause 3.4.3, to show that Mandrem Beach where the Hotel is supposed to come up is described as main nesting sites of Olive Ridley Turtles in Goa. A similar application moved by one Competent Automobiles in Writ Petition already decided vide MCA no. 884/2006, was dismissed on 13.03.2007. The subsequent Order dated 07.04.2008, passed by Hon'ble Apex Court in the matter and sought to be relied upon by petitioner is stated to be not applicable in the presen matter.

4. Perusal of the Orders passed by the Hon'ble Apex Court shows that there the grievance made was if Hotel Project was cleared, large number of trees were likely to be cut and sand dunes in the land would be flattened, thereby, adversely affecting coastal eco-system and causing pollution. Hon'ble Apex Court found that it can be considered by MoEF and other appropriate authorities. In paragraph 5, Hon'ble Apex Court has also observed that authorities have to examine whether construction of Hotel is permissible at that site in accordance with law and the present respondent no.4 was given liberty to raise all objections before MoEF or other appropriate authorities. In paragraph 6 thereafter, the Hon'ble Apex Court found that if at all clearances were obtained by petitioner as required for securing licence for construction, the High Court may, on application of petitioner, consider granting them exemption/exclusion from operation of ban in paragraph 32(E) of the Judgment mentioned above. This further course of action as directed by this Court is maintained.

5. It is not in dispute that as directed by this Court, the open plots in CRZ-III zones available for construction of Hotels are yet not identified and the appropriate policy or regulation for utilization thereof has also not been formulated. This Court vide operative part, directed that till that exercise was complete, no new licences for any type of construction in CRZ-III Zone should be granted and no new structure should be allowed to be constructed.

6. Though petitioner in his Petition in paragraph 7 has stated that portion of his property whereon Beach Resort is proposed to be set up is affected by Coastal Regulation Zone Notification 1991, and though in said Notification it is stated to be falling under CRZ-III Zone, the authorities namely respondent no.3, Goa Coastal Zone Management Authority has granted him the necessary clearance. It appears to be without looking at rapid EIA.

7. The copy of EIA pertaining to Hotel of petitioner submitted by petitioner himself to respondent no.3 is shown to us by learned Counsel for respondent no.4 and its relevant page which carries 3.4.3 has got heading Turtle Nesting Sites in the Buffer Zone. The said page is page no.23 of the said report. The said clause mentions that Morjim and Mandrem beaches are the main nesting sites and all sites are protected by Forest Department with the help of local people. It is also mentioned that proposed Project area is about 4.5 kms from Marine Turtle Project at Morjim. It is also mentioned that Morjim beach has a good sandy shore with well developed dune system. It is also mentioned that during 1997-98, total five nests were located and protected on part of Morjim beach. The number increased to eight in 1998-99 and resulted in extension of protected area of the beach. It is also stated that because of consistent efforts, the nesting sites reached 32 in 2000-01.

8. The learned Counsel for petitioner has invited attention to page 9 of said report to show that in paragraph 3.1.1 where location features are described, the site is expressly stated to be in CRZ-III. He has also pointed out from the map appearing at page 23 below para 3.4.3, that Marine Turtle Nesting Site which is shown by a circle is at Morjim beach which is 4.5 kms from the Hotel site which is shown in black square at Mandrem beach. The learned Counsel appearing for respondent no.4 has heavily relied upon the very opening line of said paragraph which we have already mentioned above. Learned Counsel has further stated and, in our opinion rightly, that Turtles will not go to Morjim beach because a Project for them has been undertaken at that place. The increasing number of nests clearly show that the concern expressed by respondent no.4 cannot be stated to be ill founded. The fact that Mandrem beach is main nesting site of Olive Ridley Turtles in Goa, is mentioned in said paragraph by petitioners themselves.

9. The Hon'ble Apex Court has not disturbed the Judgment delivered by this Court in Writ Petition no. 422/1998 and 99/1999. On the contrary, the action as directed therein is ordered to be taken even in case of M/s. Competent Automobiles. The consideration of proposal of petitioner by respondent no.3 shows that earlier his proposal was cleared by GCZMA in 24th meeting held on 02.12.2005 for reference to MoEF and then petitioner applied for re-location of building on the plan as they have acquired additional land adjoining their property. The 40th meeting of GCZMA conducted on 08.10.2008, considered said aspect and decided to refer the matter to TCP for scrutinizing the revised plan. It is also mentioned that TCP has given its recommendations in principle subject to guidelines in CRZ Notification. This consideration is after High Court Judgment mentioned above. Our attention has been invited to the fact that in the approved Coastal Zone Management Plan issued under CRZ Notification, Turtle Nesting Sites at Mandrem have been classified as CRZ-I, where no development is permitted. The authorities, however, have not filed any affidavit before us and the statement about the nesting sites of Olive Ridley Turtles appearing at opening of paragraph 3.4.3, does not appear to have been considered by respondent no.3.

10. In the circumstances, we are not inclined to interfere in the matter in writ jurisdiction. Writ Petition is, therefore, dismissed.

B. P. DHARMADHIKARI, J.

U. D. SALVI, J.

arp/*

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Annexure 'P-15'

Government of Goa
Department of Tourism
Patto, Panaji-Goa
Tel: 0832 2438750/51/52
Email: goatourism@dataone.in Web: www.goatourism.org

No. 1/14(84)/09-DT/ 1783

August 28, 2009

To,
Shri Natubhai Kotecha,
Principal Officer,
Maha Seer Hotels & Resorts Pvt. Ltd.
Dr. Shrigaokar Road, Nr. Hotel Nova Goa,
Mob: 9326107410
Panaji-Goa

Sub: Information under the Right to Information Act, 2005.

Sir,

This has reference to your letter dated 26/08/2009 on the above cited subject.

In the above context, the required information as available on record is given below:

1) Total Nos. of No Objection Certificates issued for the shacks in private property are 42 in nos. and 3 for the huts/stalls at Morjim vaddo. The NOC's were valid from October 2008 to 31st May 2009.

2) There were 8 shacks permitted by Government on the Morjim beach for the year 2008-09. The validity of the permissions were valid from October 2008 to 31st May 2009.

Yours faithfully

28/08/2009

(H. K. Parsenkar)
Dy. Director of Tourism (P) &
Public Information Officer (North)

True Copy

AHA SEER HOTELS & RESORTS PRIVATE LIMITED

Regd. Office : 2, Kasturba Gandhi Marg, New Delhi-110001
Adm. Office : Flat No. 43, B-Block, Middle Circle, Connaught Place, New Delhi-1
Tel. : 091-11-41513656, 57, 58, Fax : 091-11-41513659
E-mail : mahaseer1@gmail.com

Annexure 'P-16'

Ref:AESPL/09-10/

Date: 30/07/2009

To,
The Public Information Officer,
The Chief Conservator of Forest,
Conservator of Forests- Territorial,
Wildlife and Eco-tourism,
Gomantak Maratha Samaj Building,
Panaji Goa.

Subject: Information regarding sea turtle nesting sites in Goa Under Right to Information Act 2005

Respected Sir,

We understand that Goa Forest Department has declared some areas (Turtle nesting sites in Goa) as protected areas.

We request you to provide us information as follows :

- Which sites/beaches in Goa are declared as protected areas? Under which Rule / Act? We request you to give us copies of the Notifications made declaring them as protected areas.
- What are restrictions for tourism development in these areas? Are these spelt out in the Notification?
- What methods are used for protection of turtle nesting sites?
- Whether Mandrem and Ashwem beach are also protected areas? Is any turtle nesting observed in these areas?

Kindly do the needful.

Thanking you.

Yours sincerely
For Maha Seer Hotels & Resorts Pvt. Ltd.

31/7/09

Director

True Copy

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Annexure 'P-17' (Colly.)

GOVERNMENT OF GOA

OFFICE OF THE DEPUTY CONSERVATORY OF FORESTS

WILDLIFE & ECOTOURISM

PANAJI-GOA

NO3/520-WL&ET/07-09/1309 DATED: 07/09/2009

To

The Director,
Maha Seer Hotels & Resorts Pvt. Ltd.,
Plot No. 43, B-Block,
Middle Circle, Connaught Place,
New Delhi-110001

Sub: Information regarding Sea Turtle nesting sites in Goa under RTI act, 2005.

Sir,

I am to refer to your letter No. AESPL/09-10/ dated 30.7.2009 on the above quoted subject and to furnish the relevant information as follows:

1) Find enclosed 4 Notifications for the Pas coming under the jurisdiction of this division.

2) The Wildlife (Protection) Act, 1972 may please be referred for the relevant details.

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3) The turtle Nesting sites are protected by keeping watch round the clock during the season of nesting. Necessary physical barriers are installed to avoid physical damage by predators and other blotic & blotic elements.

4) Mandrem and Ashwem are not notified under wildlife (Protection) act, 1972 and no such turtle nesting is reported in those areas.

5) Please remit the required amount towards supply of the said above documents.

Yours faithfully,

Sd/-
(Debendra Dalni) IFS,
Dy. Conservator of Forests
Wildlife & Ecotourism

3.4.3. TURTLE NESTING SITES IN THE BUFFER ZONE:

Morjim & Mandrem beaches are the main nesting sites of Olive Ridley Turtles in Goa. All sites are protected by the Forest Department with the help of local people. The proposed project area is about 4.5 km away from the Marine Turtle Project at Morjim.

Morjim beach has a good sandy shore with well-developed dune system. A long strip, which terminates at the mouth of river Chapora, is marked by extensive rows of sand dunes with dune vegetation being more pronounced in the southern part. In 1996, the Goa Forest Department deployed Forest guards and volunteers to protect the turtles and their nests. During 1997-98, only 5 nests were located and protected on part of the Morjim beach. This number increased to 8 in 1998-99 and resulted in extension of the protected area of the beach. Consistent efforts have resulted in increased nesting with number reaching 32 nests in 2000-01.

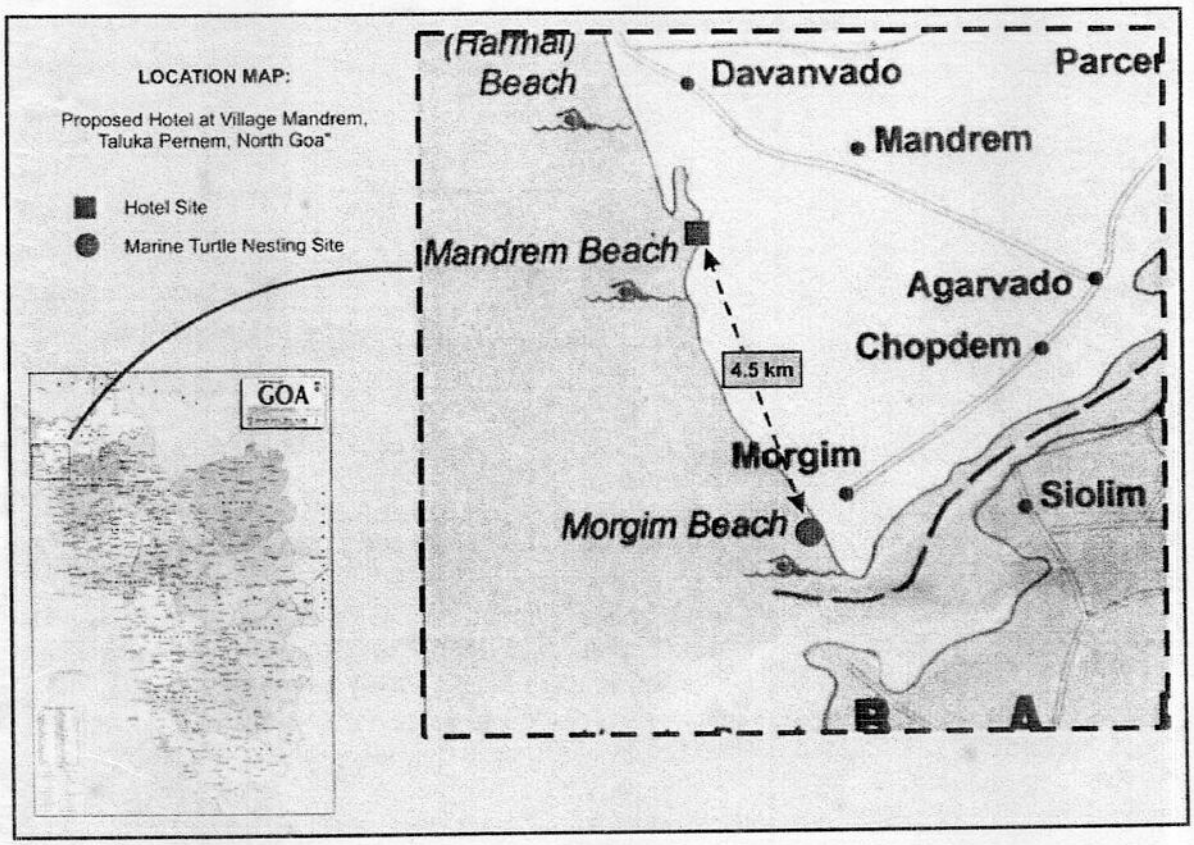

Fig 3.9: Location of Marine Turtle Nesting Site

Writ Petition No. 292/2009

M/s Maha Seer Hotel & Resorts Pvt. Ltd.

V/s

Union of India; State of Goa; Goa Coastal Zone Management Authority; The Goa Foundation

Issue: Maha Seer Hotel & Resorts Pvt. Ltd.'s proposal for development of a hotel coming up near the main nesting sites of the Olive Ridley Turtles on Mandrem Beach was approved by the Goa Coastal Zone Management Authority, who however it refused to forward the proposal to the Ministry of Environment because of the Judgment dated 13/10/2006 in Writ Petition Nos. 422/1998 and 99/1999, which directed the Chief Town Planner and the State of Goa as follows:

> "To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization therefore before they are being allowed to be utilized for such construction activities.
>
> Till and until the survey and inquiry is completed, as directed above, no new license for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of any nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/or renovation of the existing houses."

Goa Foundation opposed the petitioner's project proposal because Mandrem beach is a turtle nesting site and has extensive sand dunes, thus making it a CRZ I area as per the approved Coastal Management Zone Plan.

Judgment: 6/7/2009

The approved Coastal Zone Management Plan issued under CRZ Notification has classified Turtle Nesting Sites at Mandrem as CRZ-I, where no development is permitted. The Environment Impact Assessment pertaining to the petitioner's proposed project also observes that Mandrem beach is the main nesting site of Olive Ridley Turtles in Goa. This statement about the nesting sites of Olive Ridley Turtles does not appear to have been considered by the GCZMA.

Under the circumstances, we are not inclined to interfere in the matter in writ jurisdiction. Therefore, this Writ Petition is dismissed.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 292 OF 2009

M/S. MAHA SEER HOTEL AND RESORTS PVT LTD ... Petitioner

Versus

UNION OF INDIA THROUGH SECRETARY AND 3 ORS., ... Respondents

Mr. P. S. Rao, Advocate for the Petitioner.
Mr. C. A. Ferreira, Asst. Solicitor General for respondent no.1.
Mr. S. S. Kantak, Advocate General with Ms. S. Mordekar, Addl. Government Advocate for the Respondent nos. 2 and 3.
Ms. Norma Alvares, Advocate for Respondent no.4.

Coram:- B. P. DHARMADHIKARI & U. D. SALVI, JJ.

Date:- 6th July, 2009

ORAL ORDER

By this Petition, petitioner is seeking a writ against the respondent no.3 to forward his proposal for development i.e. construction of Hotel for Environmental Clearance to respondent no.1, which is sought in background of Judgment dated 13.10.2006 delivered by this Court in Writ Petition no. 422/1998 and 99/1999. The operative part (D) and (E) therein are important for consideration of present controversy. The same read as under :

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilized for such construction activities.

(E) Till and until the survey and inquiry is completed, as

directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/or renovation of the existing houses.

2. Petitioner states that their proposal for development is approved by respondent no.3 vide subject no. 46.4.2 but then because of the above mentioned Judgment, they have expressed inability to forward it to respondent no.1. Learned Counsel for petitioner states that the proposal, therefore, should be directed to be forwarded to respondent no.1 so that it can be processed further in accordance with law and all objections to that proposal can be appropriately considered by respondent no.1.

3. The respondent nos. 1, 2 and 3 have not filed any reply. Respondent no.4, the petitioner in Writ Petition No. 422/1998, has contended that the Hotel is coming up in CRZ-I area and for that purpose, our attention is invited to Environmental Impact Assessment of said Hotel of petitioner particularly clause 3.4.3, to show that Mandrem Beach where the Hotel is supposed to come up is described as main nesting sites of Olive Ridley Turtles in Goa. A similar application moved by one Competent Automobiles in Writ Petition already decided vide MCA no. 884/2006, was dismissed on 13.03.2007. The subsequent Order dated 07.04.2008, passed by Hon'ble Apex Court in the matter and sought to be relied upon by petitioner is stated to be not applicable in the present matter.

4. Perusal of the Orders passed by the Hon'ble Apex Court shows that there the grievance made was if Hotel Project was cleared, large number of trees were likely to be cut and sand dunes in the land would be flattened, thereby, adversely affecting coastal eco-system and causing pollution. Hon'ble Apex Court found that it can be considered by MoEF and other appropriate authorities. In paragraph 5, Hon'ble Apex Court has also observed that authorities have to examine whether construction of Hotel is permissible at that site in accordance with law and the present respondent no.4 was given liberty to raise all objections before MoEF or other appropriate authorities. In paragraph 6 thereafter, the Hon'ble Apex Court found that if at all clearances were obtained by petitioner as required for securing licence for construction, the High Court may, on application of petitioner, consider granting them exemption/exclusion from operation of ban in paragraph 32(E) of the Judgment mentioned above. This further course of action as directed by this Court is maintained.

5. It is not in dispute that as directed by this Court, the open plots in CRZ-III zones available for construction of Hotels are yet not identified and the appropriate policy or regulation for utilization thereof has also not been formulated. This Court vide operative part, directed that till that exercise was complete, no new licences for any type of construction in CRZ-III Zone should be granted and no new structure should be allowed to be constructed.

6. Though petitioner in his Petition in paragraph 7 has stated that portion of his property whereon Beach Resort is proposed to be set up is affected by Coastal Regulation Zone Notification 1991, and though in said Notification it is stated to be falling under CRZ-III Zone, the authorities namely respondent no.3, Goa Coastal Zone Management Authority has granted him the necessary clearance. It appears to be without looking at rapid EIA.

7. The copy of EIA pertaining to Hotel of petitioner submitted by petitioner himself to respondent no.3 is shown to us by learned Counsel for respondent no.4 and its relevant page which carries 3.4.3 has got heading Turtle Nesting Sites in the Buffer Zone. The said page is page no.23 of the said report. The said clause mentions that Morjim and Mandrem beaches are the main nesting sites and all sites are protected by Forest Department with the help of local people. It is also mentioned that proposed Project area is about 4.5 kms from Marine Turtle Project at Morjim. It is also mentioned that Morjim beach has a good sandy shore with well developed dune system. It is also mentioned that during 1997-98, total five nests were located and protected on part of Morjim beach. The number increased to eight in 1998-99 and resulted in extension of protected area of the beach. It is also stated that because of consistent efforts, the nesting sites reached 32 in 2000-01.

8. The learned Counsel for petitioner has invited attention to page 9 of said report to show that in paragraph 3.1.1 where location features are described, the site is expressly stated to be in CRZ-III. He has also pointed out from the map appearing at page 23 below para 3.4.3, that Marine Turtle Nesting Site which is shown by a circle is at Morjim beach which is 4.5 kms from the Hotel site which is shown in black square at Mandrem beach. The learned Counsel appearing for respondent no.4 has heavily relied upon the very opening line of said paragraph which we have already mentioned above. Learned Counsel has further stated and, in our opinion rightly, that Turtles will not go to Morjim beach because a Project for them has been undertaken at that place. The increasing number of nests clearly show that the concern expressed by respondent no.4 cannot be stated to be ill founded. The fact that Mandrem beach is main nesting site of Olive Ridley Turtles in Goa, is mentioned in said paragraph by petitioners themselves.

9. The Hon'ble Apex Court has not disturbed the Judgment delivered by this Court in Writ Petition no. 422/1998 and 99/1999. On the contrary, the action as directed therein is ordered to be taken even in case of M/s. Competent Automobiles. The consideration of proposal of petitioner by respondent no.3 shows that earlier his proposal was cleared by GCZMA in 24th meeting held on 02.12.2005 for reference to MoEF and then petitioner applied for re-location of building on the plan as they have acquired additional land adjoining their property. The 40th meeting of GCZMA conducted on 08.10.2008, considered said aspect and decided to refer the matter to TCP for scrutinizing the revised plan. It is also mentioned that TCP has given its recommendations in principle subject to guidelines in CRZ Notification. This consideration is after High Court Judgment mentioned above. Our attention has been invited to the fact that in the approved Coastal Zone Management Plan issued under CRZ Notification, Turtle Nesting Sites at Mandrem have been classified as CRZ-I, where no development is permitted. The authorities, however, have not filed any affidavit before us and the statement about the nesting sites of Olive Ridley Turtles appearing at opening of paragraph 3.4.3, does not appear to have been considered by respondent no.3.

10. In the circumstances, we are not inclined to interfere in the matter in writ jurisdiction. Writ Petition is, therefore, dismissed.

B. P. DHARMADHIKARI, J.

U. D. SALVI, J.

arp/*

TRUE COPY
22/7/14
Assistant Registrar
High Court of Bombay
Panaji Bench (Goa)

ITEM NO.5 COURT NO.5 SECTION IX

730597

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25915/2009

(From the judgement and order dated 06/07/2009 in WP No.292/2009 of The HIGH COURT OF BOMBAY AT GOA)

MAHA SEER HOTEL & RESORTS P.LTD. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With appln. for permission to file additional documents and prayer for interim relief)

Date: 21/02/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. Ajay Bhushan Kalia, Adv.
Mr. Ajay Sharma, Adv.

For Respondent(s) Mr. Sanjay Parikh, Adv.
Ms. Mamta Saxena, Adv.
Mr. A.N. Singh, Adv.
Mr. Pranav Raina, Adv.
Ms. Anitha Shenoy, Adv.

Mr. M. Khairati, Adv.
Mr. B.K. Prasad, Adv.

Certified to be true copy
Saxena
Assistant Registrar (Judl.)
24.02.12
Supreme Court of India

UPON hearing counsel the Court made the following

O R D E R

Learned counsel for the petitioner seeks permission to withdraw the special leave petition with liberty to challenge the notification issued by the Government of India in the manner known to law. Permission is granted. It is made clear that we have not expressed any opinion on the merits of the proposed action. The special leave petition is dismissed as withdrawn accordingly.

[Usha Bhardwaj]
Court Master

[Savita Sainani]
Court Master

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 292 OF 2009

M/S. MAHA SEER HOTEL AND RESORTS PVT LTD ... Petitioner

Versus

UNION OF INDIA THROUGH SECRETARY AND 3 ORS., ... Respondents

Mr. P. S. Rao,Advocate for the petitioner.
Mr. G. Teles, Advocate holding for Mr. C.A.Ferreira, Asst. Solicitor General for the respondent No.1.
Ms. S. Mordekar, Additional Govt. Advocate for the respondent Nos. 2 and 3.
Ms. Norma Alvares, Advocate for the respondent No.4.

Coram:- B. P. DHARMADHIKARI & U. D. SALVI, JJ.

Date:- 15th June, 2009

P.C.

The respondent No.4 has filed reply affidavit. The other respondents are seeking time to file reply. The learned Counsel for the petitioner seeks leave to replace the annexure D as it is incomplete. Permission granted. Replaced annexure be supplied to the respondent also. The petitioner seeks time of two weeks to further argue the matter. Time granted. S.O. to 29.06.2009.

B. P. DHARMADHIKARI, J.

U. D. SALVI, J.

SMA

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 292 OF 2009

M/S. MAHA SEER HOTEL AND RESORTS PVT LTD ... Petitioner

Versus

UNION OF INDIA THROUGH SECRETARY AND 3 ORS., ... Respondents

Mr. M. S. Sonak, Advocate with Mr. P.S. Rao, Advocate for the petitioner.
Mr. C. A. Ferreira, Addl. Solicitor General for the respondent no. 1.
Mr. S.S. Kantak, Advocate General with Ms. Sapna Mordekar, Addl. Govt. Advocate for respondents no. 2 and 3.
Ms. Norma Alvares, Advocate for respondent no. 4.

Coram:- B. P. DHARMADHIKARI &
U. D. SALVI, JJ.

Date:- 5th May, 2009

P.C.

Learned Additional Government Advocate for respondents no. 2 and 3 waives notice. Notice returnable on 15.6.2009.

B. P. DHARMADHIKARI, J.

U. D. SALVI, J.

*am/-

IN THE HIGH COURT OF BOMBAY, AT GOA

WRIT PETITION NO. 292/2009.

M/s. Maha Seer Hotel & Resorts)
Pvt. Ltd., represented herein)
by Shri Natubhai Kotecha,)
Principal Officer, resident of)
Dr/ Shirodkar Road, Panaji-Goa) ….. **Petitioner.**

VERSUS

Union of India and three)
others.) ….. **Respondents.**

I N D E X

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8. ANNEXURE "F" (copy of the relevant extracts of the 46th Meeting of Respondent No.3 dated 13/11/2008). 43-44

9. ANNEXURE "G" (copy of the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999). 45-87

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12. **VAKALATNAMA.**

Place:-Panaji-Goa.

Dated:-2/5/2009.

Advocate for the Petitioner.

A

S Y N O P S I S

25/5/2007) 1/12/2005)	The Petitioner vide Deeds of Sale purchases property admeasuring 78630 square meters; 59,088 square meters; and 93,435 square meters at Mandrem, approximately at an expense of Rs.16.00 crores excluding costs towards legal expenses, brokerage service, etc., with an intention to set up a Beach Resort.
2/2/2005	The Respondent No.3 in its 24th Meeting clears the Project of the Petitioner for reference to MOEF.
4/4/2005	The Petitioner submits a Project proposal to the Respondent No.3.
5/4/2005	The Respondent No.3 issues permission to the Petitioner for construction of wire fencing.
26/12/2005	The Respondent No.3 informs the Petitioner that it has agreed to send the Project proposal for Environmental Clearance to the Respondent No.1 and the Petitioner is called upon to submit certain

documents, in order to enable the Respondent No.3 to send Project proposal to the Respondent No.1.

13/10/2006 This Hon'ble Court is pleased to issue certain directions, which predominantly pertained to the Residential Houses in relation to the CRZ-III Zone, out of which directions (D) and (E) affect the Petitioner.

6/12/2007 The Petitioner submits requisite documents called upon by the Respondent No.3 to submit vide its letter dated 26/12/2005 and further encloses various permissions obtained from the Water Department, Power Department, Forest Department, as well as Environmental Assessment Report.

7/4/2008 The Hon'ble Apex Court in Special Leave to Appeal (Civil) No.6229/2007 arising from the Judgment and Order of this Hon'ble Court dated 13/10/2006, is pleased to grant relief to the Petitioner therein that if all the formalities are completed and the Petitioner therein obtains licence for construction, the

C

Petitioner therein may approach this Hon'ble Court to seek exemption/exclusion of ban contained in Paragraph 32(E) of the Judgment of this Hon'ble Court.

8/5/2008 The Respondent No.3 in its 40th Meeting is pleased to defer the matter and records that the Plans submitted by the Petitioner be scrutinized by the T.C.P. before recommending the case to Respondent No.1.

13/11/2008 The Respondent No.3 in its 46th Meeting holds that the T.C.P. has given its recommendation in principle to the Plans submitted by the Petitioner. That the Petitioner have also submitted Revised EIA Report in terms of EIA Notification, 2006. However, the Respondent No.3 concludes by holding that in view of the directions passed by this Hon'ble Court in Writ Petition Nos.422/1998 and 99/1999, it would not be in a position to forward the proposal to the Respondent No.1, though it had earlier approved the Project.

D

2/5/2009 Aggrieved, present Petition filed.

POINTS TO BE DECIDED

(A) Whether, the decision of the Respondent No.3 not to forward the Project proposal for approval to the Respondent No.1 is illegal, improper and without jurisdiction?

(B) Whether, the issues in Writ Petition Nos.422/1998 and 99/1999 concerned the setting up of new Residential Units or development in CRZ Zone contrary to the provisions comprised under Clause 6(2) CRZ-III (iii) of the CRZ Notification of 1991 and not the construction of Hotel/Beach Resorts in terms of Clause 6(2) CRZ-III(ii) of CRZ Notification of 1991?

(C) Whether, mere forwarding of Project proposal by the Respondent No.3 to Respondent No.1 is not

E

prohibited by the directions issued by this Hon'ble Court in Writ Petition Nos.422/1998 and 99/1999?

(D) Whether, the Respondent No.3 by not applying the same yardstick as was applied in the case of Competent Automobiles Pvt. Ltd. which preferred Special Leave to Appeal (Civil) No.6229/2007 to the Petitioner's case, despite the Petitioner being similarly situated as Competent Automobiles Pvt. Ltd., has acted in an arbitrary and unreasonable manner thereby violating the mandate of Article 14 of the Constitution of India?

(E) Whether, the Respondent No.3 having taken a decision to forward the Project proposal of the Petitioner to Respondent No.1 in the year 2005 itself, the directions issued by this Hon'ble Court in the Judgment and Order dated 13/10/2006, are not

F

applicable to the case of the Petitioner?

(F) Whether, the Respondent No.3 has failed to take into consideration the Order of the Hon'ble Apex Court dated 7/4/2008 passed in Special Leave to Appeal (Civil) No.6229/2007 which arose from the Judgment and Order dated 13/10/2006 passed by this Hon'ble Court in Writ Petition Nos.422/1998 and 99/1999?

(G) Such other points that may be urged at the time of hearing.

ACTS AND REGULATIONS TO BE RELIED UPON

(1) Goa Coastal Regulation Zone, 1991.

(2) Constitution of India.

(3) Town & Country Planning Act, 1975.

(4) Such other Acts & Regulations with the leave of this Hon'ble Court.

G

LIST OF AUTHORITIES

NIL AT THE MOMENT.

Place:-Panaji-Goa.

Dated:-2/5/2009.

Advocate for the Petitioner.

IN THE HIGH COURT OF BOMBAY, AT GOA

WRIT PETITION NO. /2009.

IN THE MATTER OF GOA COASTAL REGULATION ZONE, 1991.

A N D

IN THE MATTER OF ARTICLES 14, 19(1)(g) AND 300A OF THE CONSTITUTION OF INDIA.

A N D

IN THE MATETR OF ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

M/S. MAHA SEER HOTEL & RESORTS PVT. LIMITED, a Company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its Registered Office at 2, Kasturba Gandhi Marg, NEW DELHI-110001, represented herein by Shri Natubhai Kotecha, Principal Officer, resident of Dr. Shirodkar Road, Panaji-Goa. **(REGISTERED ADDRESS)** ..... **Petitioner.**

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VERSUS

(1) UNION OF INDIA, through Secretary, having Office at Ministry of Environment & Forests, Government of India, Paryavaran Bhavan, C.G.O. Complex, Lodi Road, NEW DELHI-110003.)

(2) STATE OF GOA, through its Chief Secretary, having Office at Secretariat, Porvorim, Bardez-Goa.

(3) GOA COASTAL ZONE MANAGEMENT AUTHORITY, through its Member Secretary, opposite Saligao Seminary, P.O. Saligao, Bardez-Goa.

(4) THE GOA FOUNDATION, represented by its Secretary, Dr. Claude Alvares, with Registered office at Room No.7, above Mapusa Clinic, Mapusa, Bardez-Goa-403 507.

(REGISTERED ADDRESSES).) ..... Respondents.

TO

THE HONOURABLE CHIEF JUSTICE

AND OTHER COMPANION JUDGES.

THIS HUMBLE PETITION OF THE PETITIONER ABOVENAMED.

MAY IT PLEASE YOUR LORDSHIPS:

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(1) The Petitioner is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 (Act 1 of 1956). Shri Natubhai Kotecha, its Principal Officer has been duly authorized to file the present Petition on behalf of the Petitioner Company.

(2) Vide Registered Sale Deeds dated 25/8/2004 and 1/12/2005, the Petitioner has acquired Property admeasuring 78,630 square meters (Survey No.210/0); 59,088 square meters (Survey No.211/2); and 93,435 square meters along with Residential Beach House therein (Survey No.212/0), situated at Mandrem, Pernem, North Goa, hereinafter referred to as the Said Property. Towards such acquisition, the Petitioner has incurred expenses of Rs.16.00 crores, excluding the cost towards legal expenses, brokerage, Surveys, etc.

The Petitioner craves leave to refer to and rely upon the said Sale Deeds, when produced.

(3) The Petitioner states that the Said Property was acquired by the Petitioner for the purposes of setting up a Beach Resort thereon. Accordingly, a Project proposal

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came to be submitted to the Respondent No.3 on or about 4/4/2005, with reference to the Property which had been acquired by the said date. Vide communication No. GCZMA/N/453/1204 dated 26-27/12/2005, the Respondent No.3 agreed to send the Project proposal for Environmental Clearance to the Respondent No.1 as provided under the Coastal Regulation Zone Notification, 1991. In order to enable to forward such Project proposal to the Respondent No.1, certain documents were required to be submitted.

A copy of the said communication dated 26-27/12/2005 is hereto annexed and marked as "**ANNEXURE A**" to this Petition.

(4) The Petitioner states that prior to the issuance of the aforesaid communication, the Respondent No.3 had issued Permission for construction of wire fencing vide communication No.GCZMA/N/453/704 dated 4-5/4/2005, a copy whereof is hereto annexed and marked as "**ANNEXURE B**" to this Petition.

(5) The Petitioner states that apart from the aforesaid, the Petitioner has obtained No Objection Certificates from the Water Department, Power Department, Forest Department, etc. in relation to various

aspects relevant for setting up of a Beach Resort in or upon the Said Property.

Copies of such No Objection Certificates are hereto annexed and marked as "**ANNEXURE C**" collectively to this Petition.

(6) The Petitioner states that the Said Property has been classified/zoned as 'Settlement' and accordingly, from the Planning point of view there can be no objection to the setting up of a Beach Resort in or upon the Said Property. In fact, by communication dated 6/10/2008, the Town & Country Planning Department, Government of Goa, has informed the Respondent No.3 that the Plans submitted by the Petitioner for construction of a Hotel Project in or upon the Said Property have been verified and found that the Plans submitted by the Petitioner are as per the norms from the Planning point of view and can be recommended in principle subject to certain conditions specified therein.

A copy of the said communication dated 6/10/2008 is hereto annexed and marked as "**ANNEXURE D**" to this Petition.

(7) The Petitioner states that portion of the Said Property whereon the Beach Resort is

proposed to be set up is affected by the Coastal Regulation Zone Notification, 1991 (CRZ Notification).

(8) The Petitioner states that as per the CRZ Notification of 1991, the Said Property is stated as falling under the CRZ-III Zone. In the context of construction of Hotel/Beach Resort, Clause 6(2)(CRZ-III)(ii), inter alia provides as under:-

"(ii) Development of vacant plots between 200 and 500 meters of High Tide Line in designated areas of CRZ-III with [prior approval of Ministry of Environment and Forests (MOEF)] permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II."

(9) The Petitioner states that the Beach Resort proposed to be set up by the Petitioner complies with the guidelines set out at "ANNEXURE-II" to the CRZ Notification of 1991. The Project proposal was indeed verified by the Respondent No.3, which is a Nodal Agency for forwarding applications to

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the Respondent No.1 in the matter of seeking approval in terms of the CRZ Notification of 1991. Vide communication dated 26-27/12/2005 the Petitioner was called upon to submit certain documents, to enable the Respondent No.3 to forward the same to Respondent No.1. The Petitioner, accordingly, has submitted the necessary documents to the Respondent No.3.

(10) The Petitioner vide letter dated 6/12/2007, inter alia submitted the duly filled in Questionnaire Design by MOEF; No Objection Certificates from the Water Department; Power Department and Forest Department; correspondence from Tourism authorities; correspondence from the CRZ authorities and an Environmental Assessment Report to the Respondent No.3.

A copy of the covering letter dated 6/12/2007 is hereto annexed and marked as "**ANNEXURE E**" to this Petition.

(11) The Petitioner states that the Petitioner's Project proposal was taken up for consideration in the 40th Meeting of the Respondent No.3 held on 8/5/2008 and the Minutes of the said Meeting record as under:-

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40.4.13 Proposed construction of a Beach Resort in Survey Nos.210/0, 211/2 & 212/0 of Mandrem village, Pernem Taluka (GCZMA/N/453).

The case was explained to the members about the approval being accorded by the GCZMA in 2004 for the Hotel Project. Construction of the project has not yet commenced and MoEF approval has not yet been obtained. The project proponents (M/s Maha Seer Hotel and Resorts Pvt. Ltd.) desire to relocate the buildings on plan as they have acquired additional land adjoining their property. The matter was discussed and it was decided to scrutinize the revised plans and also consult the TCP for the same, before recommending the case to MoEF for approval. The matter is deferred.

(12) The Petitioner states that thereafter, the matter was referred to the Town & Country Planning Department, Government of Goa along with details of the Building Plans, documents, etc., the same was scrutinized by the Deputy Town Planner, Pernem and the Petitioner understands that a favoruable Report was submitted to the Chief Town

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Planner, Panaji-Goa. Vide the above referred communication dated 6/10/2008 "in principle recommendation" came to be forwarded by the Town & Country Planning Department to the Respondent No.3.

(13) The Petitioner states that in pursuance of the aforesaid, the matter was taken up for consideration at the 46th Meeting of the Respondent No.3 held on 13/11/2008. The Agenda Note concerning the Petitioner's Project ready as under:-

"**46.4.2** There is proposal from Maha Seer Hotels & Resorts Pvt. Ltd. for construction of beach resort in Mandrem Village, which was cleared by the GCZMA in its 24th meeting held on 2/12/2005 for reference to MoEF. The project proponent again applied for relocation of the building on the plan as they have acquired additional land adjoining their property. The matter was discussed in the 40th GCZMA meeting held on 8/5/2008 wherein it was decided to refer the matter to TCP for scrutinizing the revised plan. The TCP has given its in principle recommendation subject to the guidelines prescribed CRZ Notification and Town and Country Planning Act. Maha Seer Hotels & Resorts Pvt. Ltd. have also submitted

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revised EIA report in terms of the EIA Notification, 2006."

A copy of the relevant extracts of the 46th Meeting of the Respondent No.3 held on 13/11/2008 is hereto annexed and marked as "**ANNEXURE F**" to this Petition.

(14) The Petitioner states that upon consideration of the matter, however, the Respondent No.3 arrived at the following decision:-

"**46.4.2** Maha Seer Hotels & Resorts Pvt. Ltd. for construction of beach resort in Mandrem Village. The case was discussed at length and the GCZMA has decided to inform the project proponents that the GCZMA, though it had earlier approved the project, would not be in a position to forward the proposals to MoEF, at this stage, in view of the directions passed by the Hon'ble High Court in W.P.422/98 and 99/99."

(15) The Petitioner states that as the aforesaid decision makes reference to the Judgment and Order dated 13/10/2006 passed in Writ Petition Nos.422/1998 and 99/1999, wherein

the Petitioner was The Goa Foundation, the Petitioner has impleaded the Goa Foundation as Respondent No.4 to this Petition.

A copy of the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999 is hereto annexed and marked as "**ANNEXURE G**" to this Petition.

(16) The Petitioner states that Writ Petition Nos.422/1998 and 99/1999 concern the issue of granting permissions to the new Residential Units or Development in CRZ-III Zone contrary to the provisions comprised under Clause 6(2) CRZ-III(iii) of "ANNEXURE-I" to the CRZ Notification of 1991. This clause is not concerned with the construction of Hotel/Beach Resorts and the said issue is covered by Clause 6(2) CRZ-III(ii) of the CRZ Notification of 1991. However, whilst disposing of the said Writ Petitions, this Hon'ble Court was pleased to issue the following directions, out of which, Clauses (D) and (E) affect the Petitioner herein:-

(A) To conduct survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing in

the CRZ-III zone in Goa, village or townwise as on 19th February, 1991 and increase in number thereof thereafter, datewise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19th February, 1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February, 1991 in the locality comprised of the dwelling units and to take action against the same for their demolition in accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof before they are being allowed to be utilized for such construction activities.

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(E) Till and until the survey and inquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III Zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically states in the licenses to be granted for the purpose of repairs and/or renovation of the existing houses.

(F) The respondent No.5 to conduct inquiry and its responsibility for the violation of the CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and the inquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30th May, 2007, and report in that regard should be placed before this Court in the first week after the Summer Vacation of 2007, for necessary further order, if any.

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

(J) The respondent Nos.3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made

available to the public and in that regard a web-site should be opened and the entire material should be displayed on the web-site. The respondent No.3 should ensure due compliance of this direction by 10th June, 2007.

(L) The respondent nos.1 and 3 shall pay costs of Rs.10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in above terms.

(17) The Petitioner states that towards preparation and designing of the Plans and other matter, the Petitioner has incurred huge expenditure. The Petitioner states that the Petitioner has also invested huge amounts towards acquisition of the Said Property. The Petitioner states that presently there is a recession in the Hotel Industry. In the circumstances, any delay in implementation of the Project would result in severe cost over runs rendering

the Project unfeasible. The Petitioner has been given to understand that the survey directed by this Hon'ble Court in the aforesaid Writ Petition Nos.422/1998 and 99/1999 is not yet complete and further the same is not expected to be completed at least until January 2010, in the least. The Petitioner has been given to understand that the Respondent No.3 has from time to time applied to this Hon'ble Court seeking extension of time to complete the survey as directed and such extension of time has been permitted by this Hon'ble Court.

(18) The Petitioner states that by this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner questions the decision dated 13/11/2008 taken by the Respondent No.3 in the matter of refusal, forward the Petitioner's Project proposal for setting up a Beach Resort in or upon the Said Property to the Respondent No.1 for approval, primarily on the following grounds which are urged with utmost respect and without prejudice to one another:-

(a) That the issues in the Writ Petition Nos.422/1998 and 99/1999 concern the setting up

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of New Residential Units or Development in CRZ-III Zone contrary to the provisions comprise under Clause 6(2) CRZ-III(iii) of the CRZ Notification of 1991 and not the construction of Hotel/Beach Resorts in terms of Clause 6(2) CRZ-III(ii) of the CRZ Notification of 1991;

(b) The Petitioner was not at all a Party to the aforesaid Writ Petition Nos.422/1998 and 99/1999;

(c) The mere forwarding of the Project proposal by the Respondent No.3 to the Respondent No.1 is not prohibited by the directions issued by this Hon'ble Court in Writ Petition Nos.422/1998 and 99/1999;

(d) That grave and irreparable prejudice is being occasioned to the Petitioner on account of non-forwarding of the Project proposal, with no corresponding

benefit to the cause of environment or the provisions laid down in CRZ Notification of 1991;

(e) That in 2005 itself, a decision had been taken by the Respondent No.3 to forward the Petitioner's Project proposal and therefore, the directions contained in Writ Petition Nos.422/1998 and 99/1999 are inapplicable. The Direction (E) contained in the Judgment and Order dated 13/10/2006 concerns "New Licenses" or the "New Structures". In any case, there is no bar to forward the Petitioner's Project proposal to MOEF (Respondent No.1);

(f) The decision over looks relevant circumstances like the investments made by the Petitioner, the Project being consistent with the Planning Regulations as well as CRZ Guidelines and takes into account irrelevant considerations;

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(g) That mere forwarding of the proposals to the MOEF has not been barred by this Hon'ble Court in its Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999;

(h) That there is tremendous delay in completion of survey and the consequential prejudice to the Petitioner, which was not a party to Writ Petition Nos.422/1998 and 99/1999;

(i) The Order passed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.6229/2007 on 7/4/2008, in circumstances similar to that in which Petitioner is placed, has not been considered by the Respondent No.3.;

(j) Such other and further grounds that may be urged at the time of hearing.

(19) The Petitioner states that at this stage, it is relevant to make reference to the Order

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dated 7/4/2008 made by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.6229/2007 which arose from the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999 referred to herein above.

A copy of the Order dated 7/4/2008 passed by the Hon'ble Supreme Court of India is hereto annexed and marked as "**ANNEXURE H**" to this Petition.

(20) The Petitioner states that Competent Automobiles Company Limited (CACL), the Petitioner in the aforesaid Special Leave Petition before the Hon'ble Supreme Court of India was placed in virtually identical circumstances as the Petitioner herein. The Project proposal for putting up a Hotel Project by CACL was not being forwarded by the Respondent No.3 to the Respondent No.1 relying upon the directions contained in the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999. The CACL therefore initially approached this Hon'ble Court and thereafter the Hon'ble Supreme Court of India seeking certain reliefs, including, inter alia relief that their Project proposal be forwarded by the Respondent No.3 to Respondent No.1 for

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approval as contemplated by CRZ Notification of 1991. The said Special Leave Petition came to be disposed off by issuing Orders dated 7/4/2008, of which Paragraphs 5 and 6 reads as under:-

"5. Learned counsel appearing for the first respondent however, submitted that if the hotel project is cleared, large number of trees likely to be cut and the sand dunes in the land will be flattened thereby adversely affecting coastal eco-system, apart from causing pollution. These are, in our opinion, issues which will have to be considered by the MOEF and other appropriate authorities who have to process the applications if and when filed by the petitioner (or already filed) while examining whether clearance has to be given for the project. The concerned authorities have also to examine whether the construction of the hotel is permissible in accordance with law. The first respondent would be at liberty to raise any objection to the proposed project before the MOEF or other appropriate authorities.

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(6) If all formalities are completed and in the event of the petitioner securing a licence for construction, the High Court may, on an application by the petitioner in the said proceeding for exemption/exclusion from the operation of the ban in para 32(E) of its judgment, pass appropriate orders."

(21) The Petitioner states that without prejudice to other issues, it would be just, fit and proper, if similar directions are issued to the Respondent No.3 in the matter of forwarding the Petitioner's Project proposal to the Respondent No.1 and proper directions are issued to the Respondent No.1 to consider and decide on merits the Project proposal so forwarded by the Respondent No.3 within a time bound schedule. The Petitioner states that in the event, the Respondent No.1 deems it fit and proper, grant necessary clearance/approval, then the Petitioner may be granted liberty of approaching this Hon'ble Court seeking exemption/exclusion from the operation of the ban in Paragraph 32(E) of the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999.

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(22) The Petitioner, under the circumstances, prefers this Petition on the following amongst other grounds which are urged in the alternate and without prejudice to one another:-

GROUNDS

(a) The Petitioner craves leave to refer to and rely upon the grounds urged in Paragraph 18 of the Petition, as if the same have been incorporated herein.

(b) The Petitioner submits that the Petitioner has made huge investments and undertaken commitments relying upon the proposed Hotel Project. The Hotel Project of the Petitioner is in no manner inconsistent with any Building Laws or CRZ Notification of 1991. As such, the decision not to forward the Project proposal for approval to the Respondent No.1 is illegal, improper and without jurisdiction.

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(c) The Petitioner submits that the Impugned decision of Respondent No.3 is based upon misreading, misapplication and misinterpretation of the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999.

(d) In any case, the Petitioner respectfully submits that the Respondent No.3 was duty bound to take into consideration the Judgment and Order dated 7/4/2008 passed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No.6229/2007, which arose from the Judgment and Order dated 13/10/2006 passed by this Hon'ble Court in Writ Petition Nos.422/1998 and 99/1999.

(e) The Petitioner submits that the Respondent No.3 is duty bound to apply the same/equal yardsticks in the same/equal circumstances. Otherwise, there would be negation of

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Article 14 of the Constitution of India.

(f) The Petitioner submits that decision of the Hon'ble Supreme Court binds the Respondent No.3 to act in the same manner and in same circumstances. There is no appreciable difference between the case of CACL and the Petitioner herein.

(g) The Petitioner submits that the Petitioner's right under Articles 14 and 300A stands infringed, in as much as for reasons which are arbitrary, the Petitioner is unable to enjoy its property.

(h) The Petitioner submits that the shareholders and members of the Petitioner are citizens of India. In the circumstances, there is infringement of Article 19(1)(g) of the Constitution of India, as well.

(i) The Petitioner submits that the Judgment and Order dated

13/10/2006 concerned granting of permissions for New Residential Units or Developments in CRZ-III Zone contrary to the provisions under Clause 6(2) CRZ-III (iii) of ANNEXURE-I of CRZ Notification of 1991. The issue of the proposed Hotel/Beach Resort proposed to be put up by the Petitioner is covered under Clause 6(2) CRZ-III(ii) of ANNEXURE-II of CRZ Notification of 1991.

(j) The Petitioner submits that the directions contained in the Judgment and Order dated 13/10/2006 in Writ Petition Nos.422/1998 and 99/1999 do not debar the Respondent No.3 from forwarding the Project proposal concerning the Petitioner's proposed Beach Resort to the Respondent No.1, nor do the directions debar the Respondent No.1 from considering of such proposals upon its own merits and in accordance with law. As such, there can be no valid

justification of refusing to even forward the Petitioner's Project proposal by Respondent No.3 to the Respondent No.1.

(k) Such other and further grounds that may be urged at the time of hearing.

(23) The Petitioner, under the circumstances, submit that this Hon'ble Court be pleased to issue a declaration that bar contained in the Judgment and Order dated 13/10/2006 passed in Writ Petition Nos.422/1998 and 99/1999 by this Hon'ble Court shall not apply to the Project proposal of the Petitioner for setting up of Beach Resort in or upon the Said Property.

(24) The Petitioner submits that this Hon'ble Court also be pleased to issue an appropriate writ, order or direction:

(a) To withdraw the impugned decision dated 13/11/2008;

(b) For direction to the Respondent No.3 to forward the Petitioner's Project proposal for setting up of Beach Resort

upon the Said Property to the Respondent No.1 within a time bound schedule;

(c) To direct the Respondent No.1 to consider and decide on merits the Petitioner's Project proposal for setting up of Beach Resort in or upon the said Property within time bound schedule.

(25) The Petitioner states that grave and irreparable prejudice will occasion to the Petitioner, in the event, Interim Relief, is declined to the Petitioner. In the circumstances, it is just, fit and proper that pending the hearing and final disposal of this Petition, the Respondent No.3 be directed to forward the Petitioner's Project proposal for setting up of Beach Resort in or upon the Said Property to the Respondent No.1 and the Respondent No.1 be directed to consider on merits the said Project proposal within a time bound schedule.

(26) The Petitioner has not filed any other Petition either in this Hon'ble Court or in the Supreme Court of India, regarding the subject matter of this Petition.

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(27) The Petitioner has no other alternative or efficacious remedy available and the reliefs prayed for in this Petition, if granted, will be complete in themselves.

(28) The cause of action has arisen within the jurisdiction of this Hon'ble Court. Therefore, this Hon'ble Court has jurisdiction to hear and decide this Petition.

(29) A Court fee of Rs.150/- is paid herewith.

(30) The Petitioner, therefore, prays as under:-

PRAYERS

(A) This Hon'ble Court be pleased to issue a declaration that bar contained in the Judgment and Order dated 13/10/2006 passed in Writ Petition Nos.422/1998 and 99/1999 by this Hon'ble Court shall not apply to the Project proposal of the Petitioner for setting up of Beach Resort in or upon the Said Property;

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(B) This Hon'ble Court also be pleased to issue an appropriate writ, order or direction:

(a) To withdraw the impugned decision dated 13/11/2008;

(b) For direction to the Respondent No.3 to forward the Petitioner's Project proposal for setting up of Beach Resort upon the Said Property to the Respondent No.1 within a time bound schedule;

(c) To direct the Respondent No.1 to consider and decide on merits the Petitioner's Project proposal for setting up of Beach Resort in or upon the said Property within time bound schedule.

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(C) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondent No.3 to forward the Petitioner's Project proposal for setting up of Beach Resort in or upon the Said Property to the Respondent No.1 and the Respondent No.1 be directed to consider on merits the said Project proposal within a time bound schedule;

(D) For ad-interim ex-parte relief in terms of Prayer Clause (C) herein above;

(E) For such other and further relief that this Hon'ble Court deems fit and proper;

(F) For costs.

Place:-Panaji-Goa.

Dated:-2/5/2009.

Petitioner

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VERIFICATION

I, Shri Natubhai Kotecha, aged 63 years, Indian National, the Principal Officer of the Petitioner above named, resident of Panaji-Goa, do hereby solemnly verify and state that what is stated by me in Paragraphs _____ _____ of the above Writ Petition is true to my own knowledge and/or as per the records available in the office of the Petitioner Company and what is stated in the remaining Paragraphs, namely _____ are in the nature of legal submissions and/or inferences of facts, which I believe to be true.

Solemnly verified at Panaji-Goa,)
on this 2nd day of May, 2009.)

DEPONENT.

Identified by me:

Advocate for the Petitioner.

Annexure "A"

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment,
Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa – 403 511
Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

REF No.: GCZMA/N/453/1204 DATE: 26/12/2005
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To,

Shri Daniel Moses,
S-2 Paradise Apts.,
Miramar, Panaji-Goa.

Sub: Proposed construction of a Beach Resort in Survey Nos. 210,211/1 & 2 and 212 of Mandrem village, Pernem Taluka.

Sir,

This is to inform that the Goa Coastal Zone Management Authority has agreed to send your project proposal for the environmental clearance of the Ministry of Environment and Forests (GoI) as provided under the CRZ Notification of 1991.

To enable this office to forward your proposal to the MoEF (GoI) in the prescribed format, you are requested to submit the following documents at the earliest.

1. Duly filled in Questionnaire designed by the MoEF (GoI).
2. Consent to Establish issued by the Goa State Pollution Control Board (GSPCB)
3. Letter from the Public Works Department (PWD) certifying the availability of water supply.
4. Letter from the Electricity Department with a commitment to provide the required Power supply.
5. Detailed Environment Impact Assessment (EIA) Report.
6. A Contour Plan indicating the physical features of the site.
7. Photographs of the site from all four sides.
8. Landscaping/Vegetation Plan.

Kindly expedite the needful, as without these documents, the MoEF (GoI) will treat the application as incomplete.

Yours faithfully,

(Dr. N.P.S. Varde)
Member Secretary, GCZMA

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CRZ He Annexure "B"

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment,
Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa - 403 511
Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

REF. NO.: GCZMA/N/453/704 DATE: 04/04/2005
05

2407186

To,

Shri Daniel Moses,
S-2 Paradise Apts.,
Albamar Colony,
Miramar, Panaji - Goa

Sub: Proposed construction of wire fencing in Survey Nos. 210, 211/1&2, 212 of Mandrem village, Pernem Taluka.

Dear Sir,

With reference to the above-mentioned subject, it is hereby conveyed that this office has examined your application. In accordance to the provisions of the CRZ Notification of 1991, approval is hereby granted for construction of a wire fencing in Survey Nos. 210, 211/1&2, 212 of Mandrem village, Pernem Taluka.

This approval is subject to the following conditions:

1. The permission is granted as per the plan hereby annexed.
2. All the provisions of the CRZ Notification should be strictly complied with.
3. Prior to the commencement of the development/construction work, it will be incumbent upon the applicant to have the following:
   (i) Approval of the concerned Town and Country Planning Department from the planning angle.
   (ii) Licence from the Village Panchayat of Mandrem.
4. Traditional access, if any, shall not be blocked and should be maintained to the satisfaction of the Local Authority.

...2/-

(5) c/64

35

5. For any change to be effected to the approved plans, prior permission of this office has to be obtained.

6. The permission is liable to be revoked if it is found, at any stage, that the application contained false information/wrong plans/calculations/documents or any other incorrect/wrong accompaniments.

Yours faithfully,

(Dr. N.P.S. Varde)
Member Secretary, GCZMA

You may collect the copy of the approved plan during the office hours.

Copies to:

1. The Town Planner, Town and Country Planning Department, Pernem - Goa.

2. The Panchayat Secretary, Village Panchayat of Mandrem, Pernem - Goa.

Annexure "C" colly

36

No.152/1/CEE/Tech/ 1639
Office of the
Chief Electrical Engineer,
Government of Goa,
Electricity Department,
Vidyut Bhavan, 3rd floor,
Panaji - Goa.

Dated:- 28-01-2008

To,
M/s Maha Seer Hotel Resorts Pvt. Ltd.,
C/24 Ondas Do Mar, Holiday Street,
Gaura Vaddo, Calangute,
Bardez - Goa.

Sub:-Releasing 33 KV power supply at Survey No.210/01, 211/2 and 212/0 at Mandrem.
Ref:-Your application dated 11-05-2007.

Sir,

With reference to your above letter, it is to inform you that we will be able to supply a load of 3000 kVA at 33 KV subject to completion of all Departmental formalities and peak hour load restriction.

Yours faithfully,

(Nirmal Braganza)
Chief Electrical Engineer

Copy to:-
The Superintending Engineer,
Circle - II (N),Panaji - Goa.

D:\MSHILPA\NICRU SOFT WORD\Maha Seer Hotel.doc

PWD/DXVII(PHE-N)/Accts/F.A.376/07-08/

Office of the Executive Engineer,
Works Division XVII(PHE-N),
Public Works Department,
Alto Porvorim, Bardez Goa.
Email ID: ee17-pwd.goa@nic.in

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Dated: 16 /10/2007.

To.
M/s. Maha Seer Hotels & Resorts Private Limited,
Flat No. 43, B-Block,
Middle Circle,
Connaught Place,
New Delhi - 110001

Sub: Water availability certificate.

Ref: Your letter No. Nil dated 07/09/2007.

Sir,

With reference to your application dated 07/09/2207 it is informed that the water requirement amounting to 200m3 per day could be made available to the proposed resort in survey No. 210/0, 211/2 & 212/0 in village Mandrem of Pernem Taluka by the end of year 2009.

The certificate is issued based on the Production Capacity & the daily demand registered as on date.

Yours faithfully,

EXECUTIVE ENGINEER
WD.XVII (PHE-N), P.W.D.,

38
28/07/2008

GOVERNMENT OF GOA
Office of the Dy. Conservator of Forests
North Goa Division
Ponda – Goa, Pin 403401.
Phone:- 0832-2312095, 2312856 Fax. 0832-2312095.

1915
No.5/GEN/LND/DCFN/TECH/2008-09/ 288 Dated: 22/07/2008

To,
The Chief Conservator of Forests,
Panaji- Goa.

Sub:- Proposed Construction of Beach Resort in Survey Nos. 210,211/2 and 212 of Mandrem village, Pernem Taluka, North Goa.

Sir,

With reference to your letter No.2-49-2007-FD/2021 dated 15.07.2008 I am to inform you that the report of this office has already been submitted vide this office letter No.5/GEN/LND/DCFN/TECH/2007-08/752 dated 06.11.2007 & No.5/GEN/LND/DCFN/ - TECH/2007-08/106 dated 25.04.2008. Copies of the same is enclosed herewith.

Enclosed plan is returned herewith as desired.

Yours faithfully,

Dy. Conservator of Forests,
North Goa Division,
Ponda- Goa.

Encl:- As above.

*GEN/LND/TECH

encl

39

GOVERNMENT OF GOA
Office of the Dy. Conservator of Forests

North Goa Division
Ponda – Goa, Pin 403401.
Phone:- 0832-2312095, 2312856 Fax 0832-2312095.

No.5/GEN/LND/DCFN/TECH/2007-08/752 Dated: -06/11/2007

To,
The Chief Conservator of Forests,
Panaji- Goa.

Sub:- Proposed Construction of Beach Resort in Survey Nos. 210,211/2 and 212 of Mandrem village, Pernem Taluka, North Goa.

Ref:- No.2-49B-2006-Fd/2665 dt. 22.08.2007.

Sir,

With reference to the above mentioned letter this office has inspected the site for the proposed Beach Resorts at Mandrem, Pernem .

The total area is about 23.00 Ha . It is mostly flat with gentle slope towards West in some parts.

Vegetation is mostly cultivated cashew (approxi 400 no.) along with 5 mango trees. 1 vod (Banyan) and 4 other miscellaneous trees .

The density of vegetation is less than 0.4.

The area does not form part of any Govt. Forest or working plan forest.

The area is also not included in the list of areas identified as private forests by Mr. Sawant & Dr. Karapurkar Committees.

The proposed area is about 4.5Km away from the Marine Turtle Project at Morjim.

For the favour of your information and further necessary action please.

O/C

Yours faithfully,

(M.K.Shambhu) IFS,
Dy. Conservator of Forests,
North Goa Division,
Ponda- Goa.

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FORM – III

[See Rule 3(6)(2)]

Certificate of Registration of an existing well and permission for it's continuous use in the Scheduled area under 5(4) of the Goa Ground Water Regulation Act, 2002 (Goa Act 1 of 2002).

Registration Certificate

No. 19 Date: 08/04/08

1. Register Number of well 19/2008
2. Location of well
   a) Survey Number & Sub.Division 212/0
   b) Name of land Sacri Borod
   c) Revenue Village/Village Panchayat Mandrem
   d) Taluka Pernem
   e) District North Goa
3. Type of well Dug well
4. Details of well
   a) Diameter/size of well 4.00 x 4.00 mts
   b) Depth of well 6.00 mts
   c) Year of construction Not known
   d) Year of commissioning Not known
5. Name of occupant and address Akoi Fatehsingh Hardevsingh, Director, Maha Seer Hotels & Resorts Pvt.ltd, Flat No.C-24, Ondas Do Mar, Holiday Street, Calangute, Bardez Goa.
6. The device used for lifting the ground water 1/2 H.P. water pump
7. Details of power supply
   (a) Type of pump: Centrifugal/turbine/submerble/jet/compressor/others.
   (b) Horse power 0.5 H.P.
   (c) Pump capacity
   (d) E.D.Power supply connection number.
8. (a)Number of hours of pumping allowed per day half an hour
   (b)The quantity of drawal of ground water allowed per day 1000 lts
   (c)The total period of use permissible in each year Jan-Dec.
9. Validity period of registration: 1 year

This is subject to the following conditions

1. The certificate holder should not deviate in any way from specification regarding well, pump etc. mentioned above without pre-intimation and approval of Ground Water Officer.
2. The drawal of ground water under this license should not interfere with the normal activities of the locality nor should it cause any traffic hazard.
3. The Ground Water Officer or any person duly authorized by him shall have the right to inspect the place with such assistance as may be necessary to satisfy itself whether the conditions of restrictions specified as complied.

Place : Panaji
Date : 08/04/08

Signature of the Ground Water Officer

Annexure "D"

Ref.No. DA/1257/TCP-08/380
Town & Country Planning Dept.,
Government of Goa,
Pernem Goa.

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Dated:- 6/10/08.

To,
The Member Secretary,
C/O. Department of Science, Technology & Environment,
Opp. Saligao Seminary,
P.O. Saligao, Bardez – Goa.

Sub:- Verification and assessment of plans (building drawings) submitted by M/s Maha Seer Hotels & Resorts Pvt. Ltd. for proposed development of hotel project in survey No. 210, 211/1,2 & 212 at Mandrem village, Pernem Taluka.

Ref.No. GCZMA/N/453/449 dated 25/7/2008.

Sir,

With reference to the above mentioned subject, this is to inform you that the plan submitted for construction of Hotel project in survey No. 210, 211/1,2 & 212 of Mandrem village Pernem Taluka by M/s Maha Seer Hotels & Resorts Pvt. Ltd. have been verified and found that the plans submitted are as per the norms from planning point of view and can be recommended in principle subject to the following:

1. The area statement shown in the site plan shall indicate the accurate areas, viz: the total area of the plot, area within 200.mts. from HTL, area within 200 to 500mts. from HTL, area outside 500mts. from HTL, total area changed from Orchard zone to Settlement zone in Regional Plan, area under 25.00 mts. wide road, net effective area with 200 to 500 mts. from HTL, and area under open space (15% of the net effective plot area).

   The coverage and FAR calculations shall be based on the net effective plot area. Since the property is divided by a public road, it amounts to natural sub-division and plots on either side of the road have to be treated as separate plots.

..2/-

7/10/08

The Member Secretary,
Coastal Zone Management Authority,
C/o. Dept. of Science, Technology & Environment
Saligao, Bardez. Goa - 403511.

Ann D pg 41

Ref.No. DA/1257/TCP-08/380
Town & Country Planning Dept.,
Government of Goa,
Pernem Goa.

(2)

Dated:- 6/10/08.

To,
The Member Secretary,
C/O. Department of Science, Technology & Environment,
Opp. Saligao Seminary,
P.O. Saligao, Bardez – Goa.

Sub:- Verification and assessment of plans (building drawings) submitted by M/s Maha Seer Hotels & Resorts Pvt. Ltd. for proposed development of hotel project in survey No. 210, 211/1,2 & 212 at Mandrem village, Pernem Taluka.

Ref.No. GCZMA/N/453/449 dated 25/7/2008.

Sir,

With reference to the above mentioned subject, this is to inform you that the plan submitted for construction of Hotel project in survey No. 210, 211/1,2 & 212 of Mandrem village Pernem Taluka by M/s Maha Seer Hotels & Resorts Pvt. Ltd. have been verified and found that the plans submitted are as per the norms from planning point of view and can be recommended in principle subject to the following:

1. The area statement shown in the site plan shall indicate the accurate areas, viz: the total area of the plot, area within 200.mts. from HTL, area within 200 to 500mts. from HTL, area outside 500mts. from HTL, total area changed from Orchard zone to Settlement zone in Regional Plan, area under 25.00 mts. wide road, net effective area with 200 to 500 mts. from HTL, and area under open space (15% of the net effective plot area).

   The coverage and FAR calculations shall be based on the net effective plot area. Since the property is divided by a public road, it amounts to natural sub-division and plots on either side of the road have to be treated as separate plots.

..2/-

7/10/08
The Member Secretary,
Coastal Zone Management Authority,
C/O. Dept. of Science, Technology & Environment
Saligao, Bardez. Goa - 403511.

2. The open space required (15% effective plot area) shall be relocated between 200 mts. from 500 mts. from the HTL.

3. To allow public access to the beach, 20 mts. wide access shall be provided as per guidelines of CRZ Regulations.

4. The cottages proposed are on the slopping portion of land which may require cutting of land towards construction of internal access road and excavation for foundation and footing work. The cutting of sloppy land should be restricted to minimum and shall be with prior permission from Chief Town Planner u/s 17A of TCP Act, 1974

This letter shall not be construed as NOC in any form for undertaking any development/construction work. Issue of NOC will be considered on receipt of application duly forwarded by the Village Panchayat and only after the ban on construction in CRZ-III areas is lifted by the Hon'ble High Court.

Further issue of NOC will be subject to approval by Government to permit hotels/reports in settlement areas on special grounds.

Yours faithfully,

(R.N. Volvoikar)
Dy. Town Planner

MAHA SEER HOTELS & RESORTS PRIVATE LIMITED

Regd. Office : 2, Kasturba Gandhi Marg, New Delhi-110001
Adm. Office : Flat No. 43, B-Block, Middle Circle, Connaught Place, New Delhi-1
Tel. : 091-11-41513656, 57, 58, Fax : 091-11-41513659
E-mail : mahaseer1@gmail.com

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Annexure E'

Dated 6th December, 2007.

To,

The Coastal Zone Management Authority
Pilerne Industrial Estate,
Pilerne,
Bardez –Goa.

Sub: Application for Advance Environmental Clearance and CRZ rules.

Ref: GCZMA/N/453/1204, Dated: 27th December 2005

Dear Sir,

We are submitting here with an Application in the prescribed Questionnaire for grant of Environmental Clearance along with the Enclosure listed below. We request you to please forward the same to the Ministry of Forest & Environment, Government of India for Approval.

Thanking you,

Yours faithfully,
For Maha Seer Hotel & Resort Pvt. Ltd.

For Maha Seer Hotels & Resorts Pvt. Ltd.

Director

Enclosure:

1) NOC for Water.
2) NOC for Power.
3) NOC from Forest.
4) Correspondence from Tourism.
5) Correspondence from CRZ Authority.
6) Environmental Impact Assessment Report Book.

Annexure "E"
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46.2 Progress made in disposal of cases as per direction of Hon'ble High Court in SMWP No. 2 of 2006 and other Orders of the Hon'ble High Court.

In pursuance of the direction of the Hon'ble High Court in SMWP No. 2 of 2006 dated 01/04/2007 and MCA No. 50 of 2008 nearly 192 cases have been disposed by the GCZMA and this fact has been brought to the notice of the Hon'ble High Court who has taken due note of the same. The orders of the GCZMA are at various stages of compliance

The Hon'ble High Court has been pleased to uphold the order of the GCZMA in the matter of Menino Gomes v/s State & Others in W.P.No. 459 of 2006 (MCA No.641 of 2007).

The Hon'ble High Court has agreed to the scientific view of the GCZMA that "Poin" does not have tidal effect and that the delineation carried out of the NDZ using offset method i.e. parallel contour of the river bank is the correct methodology to be adopted for the riverrine areas in the State.

46.3 Proposal of the City Corporation of Panaji (CCP) to put up garbage disposal facility / waste sorting centre at the area to be acquired behind Heera Petroleum Pump and proposal to restart bio-composting station opposite LIC building Patto.

During the 45th GCZMA meeting held on 10/09/2008 to discuss Shack Policy and other matters it was decided that further details regarding ownership of the land and details of the land filling apparently done on the boarders of the property be obtained from the CCP including the proposal and conceptual plan of the Garbage disposal facility in the said area. The CCP has forwarded the concept plan for establishment of garbage disposal facility for an area covering 3555 sq. mtrs only which is to be acquired by the CCP which is exclusively to be used for garbage disposal facility. As regards to other proposal CCP has been asked to provided details and clarify the position regarding the undertaking given by the CCP in PIL W.P. No. 13 / 2007 (LIC Employees V/s CCP and others)

46.4 Matters pertaining to request by various hotels / resorts regarding minor extensions / extensions (new developments) and other clearances which has been held up due to directions of the Hon'ble High Court in W.P. 422 / 98 and 99 / 99

46.4.1 *M/s Hotel Leela Palace Goa* has sought for extension to its existing Villas (4 type B and 12 type C) where they intend to add up 45 sq. mtrs additional area to their existing Villas even after calculating the additional area consumed the FAR increases to 17.29 %

46.4.2 There is proposal from *Maha Seer Resorts & Pvt. Ltd for construction of beach resort in Mandrem Village*, which was cleared by the GCZMA in its 24th meeting held on 2/12/2005 for reference to MoEF. The project proponent again applied for relocation of the building on the plan as they have acquired additional land adjoining their property. The matter was discussed in the 40th GCZMA meeting held on 8/5/2008 wherein it was decided to refer the matter to TCP for scrutinizing the revised plan. The TCP has given its in principle recommendation subject to the guidelines prescribed CRZ Notification and Town and

does not reflect TP.

Country Planning Act. Maha Seer Hotels have also submitted revised EIA report interms of the EIA Notification, 2006.

46.4.3 *Proposal for swimming pool by Heritage Village / Select Holiday Resort in Arossim Village.* The proposal was taken up during the 45th Sub Committee meeting held on 12/9/2008 and members decided to refer it to GCZMA since as per directives of the Hon'ble High Court new development shall not be allowed.

46.4.4 *Proposal for swimming pool by. Gurubachan Singh Dhingra in Penha-de-Franca Village.* The proposal was taken up during the 45th Sub Committee meeting held on 12/9/2008 and members decided to refer it to GCZMA since as per directives of the Hon'ble High Court new development shall not be allowed

46.4.5 *A proposal from Uniworth Resort / J B Group for hotel project in Kola Village Canacona* was approved by the Erstwhile GSCCE in November 1997. This project could not be further pursued and executed due to certain unavoidable circumstances on the part of project proponent. In November 2007, the project proponents have submitted a fresh EIA report and restricted their drawings as per the demarcation carried out by the DSLR. They have requested the GCZMA to forward their revised plans to MoEF for consideration.

46.4.6 There is a proposal for extension of existing hotel project and part of hotel wall of *Villa Goesa beach Resort in Calangute Village.* The Erstwhile GSCCE had approved the project in 1994 following which most of the structures in the approved plans were constructed. The O/o MS, GCZMA submitted the revised set of plans for additional building to the MoEF in the year June, 2002. The MoEF responded in the year 2007 and asked the project proponent to submit further details as regards this project which was responded to by the project proponent. The MoEF has now requested the GCZMA to offer its comments in view of the directions in WP No. 422/98 and 99/99

All these above sites have been inspected at various stages by the Members of the Authority. A decision has to be taken regarding granting approvals for minor extension / minor developments and forwarding plans to MoEF for their clearance subject to work commencing after orders of the Hon'ble High Court.

46.5 Request to resume repairs and renovation of existing structures by M/s Sun & Sand in Sinquerim, Candolim-Goa.

The matter was taken up for discussion in the 40th meeting held on 08/05/2008 and it was decided to conduct a site inspection to ascertain the works carried out before taking decision. The site was inspected on 12/08/2008 by a GCZMA member and it was noticed that there are four structures at the site with ground floor and RCC roof, from which it appears that during execution of repair and renovation works, there is likelihood that the old structures may have been removed and new structures have been erected on the same plinth.

13/11/2008

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46.4 Matters pertaining to request by various hotels / resorts regarding minor extensions / extensions (new developments) and other clearances which has been held up due to directions of the Hon'ble High Court in W.P 422/ 98 and 99/ 99

46.4.2 Maha Seer Resorts & Pvt Ltd for construction of beach resort in Mandrem Village, The case was discussed at length and the GCZMA has decided to inform the project proponents that the GCZMA , though it had earlier approved the project, would not be in a position to forward the proposals to MOEF, at this stage, in view of the directions passed by the Hon'ble High Court in WP 422/98 and 99/ 99.

8/5/2008 – GCZMA deferred decision on hold till otherwise TCP approved

6/10/2008 – TCP decision. – NOC still required

13/11/08 – GCZMA

Annexure "G"

45

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT GOA
WRIT PETITION NO.422 OF 1998
WITH
WRIT PETITION NO.99 OF 1999

WRIT PETITION NO.422 OF 1998

The Goa Foundation,
represented by its Secretary,
Dr.Claude Alvares, with
registered office at Rm.7,
Above Mapusa Clinic,
Mapusa 403 507 Goa. .. Petitioner

Vs.

1. The Panchayat of Candolim
through its Sarpanch,
Candolim, Bardez, Goa.

2. The Goa Coastal Zone Management
Authority, through its
Member-Secretary,
Dept. of Science Technology
& Environment, Opp.Saligao
Seminary, Saligao, Bardez,
Goa.

3. State of Goa,
through its Chief Secretary,
Secretariate, Panaji.

4. The Chief Town Planner,
Town and Country Planning
Department, Old Goa Medical
College Complex, Campal,
Panaji, Goa.

5. The Secretary,
Ministry of Environment &
Forests, Government of India,
Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi 110 003.

JUDICATURE AT BOMBAY

6. Mrs.Hilda D'Souza,
Major age,
resident of Banmonwado,
Candolim, Bardez, Goa. .. Respondents

--

Ms Norma Alvares, Advocate for the Petitioner.

Mrs.A.Agni with Mrs.N. Narvekar, Advocates for the Respondent No.1.

Shri S.S.Kantak, Advocate General with Ms G.Bhonsale, Additional Government Advocate for the Respondent Nos.3 and 4.

Shri E.P.Badrinarayan, Additional Central Government Standing Counsel for the Respondent No.5.

Shri M.S.Sonak, Advocate for the Intervenor/Respondent No.6.

--

WRIT PETITION NO.99 OF 1999

The Goa Foundation,
represented by its Secretary,
Dr.Claude Alvares, with
registered office at Rm.7,
Above Mapusa Clinic,
Mapusa 403 507 Goa. .. Petitioner

Vs.

1. The Panchayat of Calangute
through its Sarpanch,
Calangute, Bardez, Goa.

2. The Goa Coastal Zone Management
Authority, through its
Member-Secretary,
Department of Science,
Technology & Environment,
Opp.Saligao Seminary, Saligao,
Bardez, Goa.

AT BOMBAY

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3. State of Goa,
through its Chief Secretary,
Secretariate, Panaji.

4. The Chief Town Planner,
Town and Country Planning
Department, Old Goa Medical
College Complex, Campal,
Panaji, Goa.

5. The Secretary,
Ministry of Environment &
Forests, Government of India,
Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi 110 003. .. Respondents

--

Ms Norma Alvares, Advocate for the Petitioner.

Shri P.A.Kamat, Advocate for the Respondent No.1.

Shri S.S.Kantak, Advocate General with Ms G.Bhonsale, Additional Government Advocate for the Respondent Nos.3 and 4.

Shri E.P.Badrinarayan, Additional Central Government Standing Counsel for the Respondent No.5.

--

CORAM : R.M.S.KHANDEPARKAR &
N.A.BRITTO, JJ

DATED : 13th OCTOBER, 2006

JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

URE AT BOMBAY PANAJI B

2. Heard. In both these petitions, the petitioners seek to restrain the respondents authorities from granting permission for new residential units or development in the CRZ-III zone contrary to the provisions comprised under clause 6(2) CRZ-III (iii) of Annexure - I (hereinafter called as "the said clause") of the CRZ Notification dated 19th February, 1991 as amended till this date, hereinafter called as "the said CRZ notification", and further to remove all constructions in the said CRZ III zone in the village of Candolim and Calangute which have been constructed in violation of the said clause, as also to conduct an inquiry to fix responsibility for the large-scale violations of the said clause of the CRZ Notification and to take necessary action against and to ensure punishment to those who are responsible for such violations.

3. Under the said CRZ Notification, an area between 200 and 500 meters of High Tide Line, hereinafter called as "the said Zone" is earmarked as 'No Development Zone'. It is the case of the petitioners that the construction activities within the said zone are restricted for residential purposes subject to the conditions incorporated in the said clause, and accordingly it prohibits construction in excess of dwelling units twice the number of dwelling

AT BOMBAY PANAJI

units as existed in the said Zone on 19th February, 1991. As of 19th February, 1991 the total number of dwelling units in the said zone in the village of Candolim were 608 whereas in the village of Calangute, they were 946. The grievance of the petitioners is that the respondents authorities in violation of the said clause of the said CRZ Notification have granted approval to the dwelling units in excess of twice the number of the said dwelling units and a large portion of the land in the said Zone in the said two villages is virtually sought to be converted into a concrete jungle which paradoxically the CRZ Notification had designed to prevent. The general principles on which the said CRZ Notification is based include control and restrictions over unwarranted development in the coastal areas essentially for ecological reasons without disturbing traditional rights and customary uses of dwellers and those enjoyed by the people of the coastal villages and that is why the said clause protects right to construct dwelling units and to organise daily life activities for the traditional inhabitants of the coastal villages as per their customary needs. It is the contention of the petitioners that the respondents authorities ignoring the object behind the said clause of the said CRZ Notification had been indiscriminately granting permission for new construction in the said zone which

AT BOMBAY PANAJI

not only needs to be stopped but action is required to be taken to restore the situation as was on 19th February, 1991 and to punish the guilty and those who are responsible for violation of the said CRZ Notification.

4. According to the respondents, the figure relating to the total number of dwelling units stated in the petitions is based on the survey which was conducted in the year 1970-71, and considering the same, structures in 1991 would be much more than those claimed by the petitioners. According to the 1991 Census which was conducted in February, 1990, the total number of residential houses in the village of Candolim was 1523 while number of households were 1563. According to the respondents, they have not granted any permission in violation of the said clause of the said CRZ Notification, and apart from the dwelling houses, there are also government buildings, religious premises and school buildings in the said area. The respondents have also sought to dispute the contention of the petitioners as regards the connotation of the expression "dwelling units". According to the respondents, the said expression refers to the entire structure or the building irrespective of the sub-units in a building or structure and the entire building is to be considered

AT BOMBAY PANAJI BENCH

as the one dwelling unit. Further, the coverage of the plot for the purpose of 33% rule, the same would relate to the plinth area of the building irrespective of how many separate families may occupy the same or how many floors the building has, and further for the purpose of understanding the meaning of doubling of the dwelling units, the same are to be counted plot wise. In a vacant plot, the construction of one or more unit can be permitted provided its total coverage area shall not exceed 33% of the plot area. Similarly, if the plot is already having two dwelling units, maximum of two or more can be permitted with only restriction being related to the total permissible coverage of the plot i.e. 33% of the plot area. It is also sought to be argued on behalf of the respondents that there is inordinate delay in approaching the Court, and therefore, there is no justification for finding fault with the respondents in relation to the permissions which have already been granted or with the constructions, according to such permissions, which have already been completed in the said area.

5. It is to be noted that at the time of hearing for admission on 17th December, 1998, the learned Government Advocate appearing for the respondent Nos.3 and 4, viz. the State of Goa and the Chief Town

Planner, Town and Country Planning Department, on instructions from the said respondents, undertook not to grant any approval or licences for construction within the area lying between 200 to 500 meters from HTL and in CRZ III zone in the State of Goa. Similar assurance was also given on behalf of the concerned Village Panchayats. Further, on 6th May, 1999, the Learned Advocate General assured the Court that Coastal Zone Management Authority would not consider any application for approval of construction in the area comprised of said zone lying between 200 to 500 meters of HTL defined as the CRZ III zone in view of the fact that the clarification and further instructions were awaited from National Coastal Zone Management Authority, and further that as and when instructions/clarifications would be received from the said authority, the same would be placed before this Court for further directions. Thereafter, an application was moved being Civil Misc.Application No.329 of 2000 by the Government of Goa for relieving of its statement and assurances, however, the same came to be rejected by a reasoned order passed by this Court on 13th September, 2000.

6. Ms Norma Alvares, the learned advocate for the petitioners, while elaborating the contentions on behalf of the petitioners, submitted that the

construction activities which are permissible within the areas comprised between 200 and 500 metres of HTL in the coastal zone are essentially restricted to the dwelling houses in accordance with the clause 6(2) CRZ-III(iii) of the said CRZ Notification and the same permits only dwelling units which are within the ambit of traditional rights and customary uses such as fishing villages and gaothans and the total number of dwelling units, which could be allowed, should not be twice the number which existed on 19th February, 1991, total coverage on all the floors being restricted to 33% of the plot size, and the overall height of construction to 9 metres with only two floors including the ground floor. Reliance is sought to be placed in the decision of the Apex Court in the matter of **C.I.T., Madras v. K.S.Ratnaswamy,** reported in (1980) 2 SCC 548, **Smt.Jeewanti Pandey v. Kishan Chandra Pandey,** reported in AIR 1982 SC 3, and **Gulf Goans Hotels Co. Ltd. & Anr. v. Union of India & Ors.,** reported in 2000(2) Goa Law Times 187. Attention has also been drawn to the dictionary meaning of the term "dwelling unit", definition of the said expression under the Planning and Development Authority (Development Plan) Regulations, 2000 and interpretation of the said expression by the Goa Coastal Zone Management Authority, while contending that essentially the dwelling unit is a home, an

abode, and not merely a habitable place but indicates residency of a more permanent nature.

7. The learned Advocate General, on the other hand, while complaining about the absence of sufficient factual data regarding plot wise violation, if any, so as to appreciate the contention sought to be raised by the petitioners, more particularly in view of the clause (iii) of the said CRZ Notification refers to 33% of the plot size, submitted that the term "dwelling unit" has to be understood with reference to the floor area and pertaining to each plot. According to the learned Advocate General, there is no scope for restricting the dwelling units under the said clause to mean that it relates to an occupation by one family alone. An unit can include sub-units, and therefore, it will relate to the entire building irrespective of number of sub-units which may exist in one unit. Drawing attention to the clause (ii) of CRZ-II of the said CRZ Notification, it was contended that the very notification permits construction of hotels and beach resorts in the said area comprised between 200 and 500 metres of HTL. Being so, there is no scope to define the dwelling unit in the manner it is sought to be contended on behalf of the petitioners. As regards 33% of the plot area, the provision only requires 67% of the plot area

should remain open. In other words, if 33% of the plot area is occupied by plinth area and the structure, then it would satisfy requirement of keeping 67% of the plot area to be open. Reliance is sought to be placed in the decision of the Apex Court in **Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd. & Ors.,** reported in AIR 2001 SC 184, and of the Calcutta High Court in **People United for better Living in Calcutta- Public & Anr. v. State of West Bengal & Ors.,** reported in AIR 1993 Calcutta 215.

8. The Central Government in exercise of powers conferred under the provisions of the Environment (Protection) Act, 1986 (hereinafter called as "the said Act") and the rules made thereunder (hereinafter called as "the said rules") issued the said CRZ Notification classifying the coastal area in four categories for the purpose of regulating and restricting the development in such area as per the said CRZ Notification. The areas which are ecologically sensitive and important, such as national parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to

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rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government and which lies between Low Tide line and High Tide Line, have been categorised as CRZ-1. The areas which have already been developed upto or close to the shore-line and which are situated within the municipal limits or in other legally designated urban areas which are already substantially built up and which have been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains, are classified as CRZ-II. The coastal stretches in the Andaman & Nicobar, Lakshadweep and small islands, except those designated as CRZ-1, CRZ-II or CRZ-III, are classified as CRZ-IV category.

9. CRZ-III zone, with which we are concerned in the matter in hand, comprises of areas which are relatively undisturbed and those which do not belong to either category CRZ-I or CRZ-II and they include coastal zones in the rural areas, either developed or undeveloped, and also areas within municipal limits or in other legally designated urban areas which are not substantially built up. As regards the areas in this category, the development therein is regulated and restricted under the said CRZ Notification in the following manner:

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"CRZ-III

(i) The area upto 200 metres from the HTL is to be earmarked as 'No Development Zone'. ** [No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage and sewerage for requirements of local inhabitants]. However, the following uses may be permissible in this zone - agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt

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manufacture from sea water.

(ii) Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the HTL permitted so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than

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twice the number of existing units; total covered area on all floors shall not exceed 33 per cent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor).

*[Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no

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other area is available for construction of such facilities].

(iv) Reconstruction/alterations of an existing authorised building permitted subject to (i) to (iii) above."

10. The grievance essentially relates to the alleged non-compliance of the clause (iii) of the said CRZ Notification quoted above. It is the case of the petitioners that the said notification clearly regulates and restricts developments within the area of 200 and 500 metres of HTL as specified in clause (iii) quoted above of the said CRZ Notification. Whilst it regulates development to the extent of 33% of the plot size and permits construction activity to the extent of twice the total number of dwelling units as they existed on 19th February, 1991 and within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans and further the height of construction being restricted to 9 metres and two floors including the ground floor and to be utilised as dwelling units. The clause (iv) thereof further specifies that even reconstruction or alterations should be in terms of the clause (iii) of the said CRZ Notification. It is, therefore, the

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contention on behalf of the petitioners that in the course of grant of permission for new dwelling units, the number of dwelling units cannot be allowed to exceed twice the number of the units which existed on 19th February, 1991. Further that such dwelling units would not include development of land by builders and estate agents for commercial purposes but it would essentially be for the people who traditionally exercise their rights in those coastal areas such as fisherfolk, toddy tappers, horticulturist, etc. It is essentially for the dwelling units by the persons engaged in such traditional occupations which are prevalent in the coastal area.

11. Plain reading of the above quoted CRZ-III Notification would undoubtedly disclose that in the area between 200 and 500 metres of HTL, the development is sought to be regulated and restricted in terms of the clauses (ii), (iii) and (iv) thereof. While clause (iv) relates to reconstruction or alterations, it essentially provides that such reconstruction and alterations are permissible subject to the provisions in the clauses (i), (ii), and (iii) thereof. Obviously, clause (i) relates to the area upto 200 metres from the HTL with which we are not concerned in these petitions.

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12. As regards the clause (ii) of CRZ-II of the said CRZ Notification, it undoubtedly permits construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions stipulated in the guidelines at Annexure-II of the said Notification. In addition, the clause specifically refers to "development of vacant plots between 200 and 500 metres of HTL." The expression "vacant plots" is not unintentional or meaningless. The relevancy of the said expression in the said clause can at once be realised on proper reading of the clause (iii) of the said CRZ Notification. The clause (iii) thereof refers to "construction/reconstruction of dwelling units between 200 and 500 metres of the HTL." In other words, while the clause (iii) specifically refers to the development of an area lying between 200 and 500 metres of HTL exclusively for construction or reconstruction of the dwelling units, the open plots in such area are allowed to be utilised for construction of the hotels in terms of the clause (ii) thereof. The expression "construction/reconstruction of dwelling units" in clause (iii) further refers to "within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans". It is settled principle of law of interpretation that no word in a statutory provision including the one in

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the subordinate legislation can be presumed to be redundant or unintentional. Reference to the "traditional rights" and "customary uses" while regulating construction activities of dwelling units in the coastal area is neither unintentional nor insignificant but evidently it discloses the intention of the framers of the law that the construction activities of dwelling units have to be "within the ambit of traditional rights and customary uses" prevalent and practiced in the concerned locality i.e. coastal area. Obviously, it will relate to the persons engaged in traditional occupations in such locality in the coastal area which would include fishing, toddy tapping, plantation, etc., otherwise the framers of the law would not have occasion to restrict the activity of construction of dwelling units "within the ambit of traditional rights and customary uses". The said expression essentially discloses that the law makers have considered the importance and necessity of and have, therefore, granted recognition to the activities of the nature of traditional occupations in such coastal area and that has been described as the ambit of extent to which the construction activities can be permitted to have the dwelling units in the said area.

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13. It is pertinent to note that while on one hand

construction of hotels and beach resorts are permissible in the vacant plots in the said area, on the other hand, construction activity which is permissible under the clause (iii) relates to the dwelling units. It does not relate to construction activity otherwise than dwelling units. Further it restricts such construction activities to be within the ambit specified thereunder. While reading the said provision, one should not ignore the description of the category CRZ-III under the said CRZ Notification which specifically speaks of "relatively undisturbed" area. At the same time, the category CRZ-II which is also close to the shore-line has been specifically classified as "developed area." This apparently shows that the framers of the law did not contemplate any construction activity within the area of 200 to 500 metres of HTL otherwise than the one specifically stated in the clauses (ii) and (iii) of the said Notification and they are dwelling units, with one exception in favour of hotels and beach resorts but only in vacant plots in the said zone. The petitioners are justified in contending that the construction activities in the said zone would not include construction of the buildings by the builders or developers for commercial purposes.

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14. The connotation of term "dwelling unit" has

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been of major controversy between the parties. Undisputedly, the term has not been defined either in the said CRZ Notification or under said Environment Act, or the said rules. However, the Planning and Development Authority (Development Plan) Regulations, 1989 issued under Section 141 of the Goa, Daman and Diu, Town and Country Planning Act, 1974 defines the term "dwelling" to mean a building or a portion thereof which is designed or used wholly or principally for residential purpose. Likewise, the Planning and Development Authority (Development Plan) Regulations, 2000 issued under Section 141 of the Goa, Daman and Diu, Town and Country Planning Act, 1974 defines the term "dwelling unit" to mean a habitable place, which should be provided with a kitchen, a W.C. and a bathroom. In common parlance a dwelling unit would obviously mean a built up structure which is meant for habitation provided it is equipped with necessary amenities like kitchen, toilet, living room and bedroom. Normally an unit would include sub-unit. However, considering the provisions of law comprised under the clause (iii) of the said CRZ Notification and various restrictions specified in relation to the dwelling units under the said clause, it is implicit that the expression "dwelling unit" under the said clause refers to unit which is commonly understood as the one sufficient to make a place for habitation in

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the sense that it is equipped with necessary amenities like the living room, bedroom, kitchen and toilet. Any other meaning to the dwelling unit under the said clause would virtually result in rendering the said clause to be totally redundant. It is to be noted that the clause specifically prohibits the increase in the "total number of dwelling units" beyond the "twice number of existing units". It further provides that total covered area on all floors, the total number of floors inclusive of ground floor should not exceed 33% of the plot size. The overall height of construction cannot exceed 9 metres. In addition, as already stated above, construction and/or reconstruction of dwelling units is permissible within the ambit of traditional rights and customary uses. Taking into consideration all these aspects under the said clause, obviously the "dwelling unit" has essentially to be a home or abode indicating residency of permanent nature. Even the National Coastal Zone Management Authority in its meeting held on 6th May, 2004 had accepted that the definition of the word "dwelling unit" has to be in terms of the building by-laws adopted by the State Government. Undoubtedly, the Ministry of Environment and Forests had advised for further examination in detail about the terminology used in the said CRZ Notification. Nevertheless, the concerned authorities have accepted that the same is

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to be understood as defined under the respective building bye-laws. The definition of the said term as provided by the Planning and Development Authorities Regulations in Goa is on par with common understanding of the said terminology i.e. the unit which is equipped with necessary amenities like kitchen, bedroom, toilet and bathroom.

15. Undoubtedly, in a building, there could be more than one unit. However, for the purpose of clause (iii) of the said Notification, it cannot be said that the entire building comprising of such units will have to be understood as the one unit. A building comprising of different units will have to be considered as consisting of more than one unit. We hasten to clarify that this will have to be understood with reference to the area between 200 and 500 metres of HTL i.e. CRZ-III zone. The same definition may not be understood in relation to the other area or zone as the definition has to be understood with reference to the said clause which necessarily relates to an area between 200 and 500 metres of HTL. Albeit, the old houses will have to be distinguished in comparison to the buildings which normally comprise of flats which would obviously disclose separate dwelling units in the same building. Obviously, old bungalow type family house in a village will have to be

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considered as one dwelling unit. Merely because in such a house, with the passage of time, the occupants thereof might have erected partition to protect privacy of couples staying in such houses, that by itself will not transform the house into multiple units. However, the same rule cannot be applied to a building comprising of different flats which is essentially planned and built to accommodate each family separately and independently. The nature of the structure at the time it was built is most relevant factor to be taken into consideration to decide whether it is one unit or more. Subsequent interior changes cannot be of any relevance.

16. As regards the point relating to 33% of the plot size, while it is the contention on behalf of the petitioners that the figure of 33% refers to the total floor area of dwelling units, according to the respondents, it relates to the total plinth area. The basis for the argument about its reference to the plinth area is that since it permits occupation of 33%, it essentially requires 67% of the plot to be kept open. The contention is totally devoid of substance. The provisions of law comprised under the clause (iii) while prescribing permissible limit of coverage to 33% of the plot size specifically refer to "total covered area on all floors". The relevant

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portion in that regard reads thus:-

> "total covered area on all floors shall not exceed 33% of the plot size."

The provisions of law being very clear as regards the coverage being referable to the total area of all the floors, one fails to understand the logic behind the argument that 33% covered area would merely require an area of 67% of the plot to be kept open. Once the law clearly provides that the percentage regarding coverage of the plot is referable to the total area of all the floors, the question of referring the coverage to the plinth area does not arise.

17. There is no dispute on the point of maximum height of 9 metres and total number of floors permissible being two floors, including ground floor, under the said clause of the said CRZ Notification.

18. The next point which requires consideration relates to the restriction regarding doubling of the units. The question is whether it is in relation to each plot or to the entire area in a village lying between 200 and 500 metres of HTL. Plain reading of the clause quoted above would disclose that as far as restriction relating to 33% coverage is concerned, the

same specifically refers to the plot size; however, in relation to the restriction to the extent of doubling the dwelling units, the clause nowhere refers to a plot as such. Indeed, the framers of the law in their wisdom have avoided to refer the clause relating to the restriction of doubling units to a plot area and in our opinion, rightly so. It is to the common knowledge that in the villages, the people usually prefer to live in reasonable proximity to each other. The settlement or the gaothan area in the village is developed consequent to the habitation of the villagers by constructing their residential accommodations. Apart from the safety point, culture and traditions also contribute to this method of habitation by the villagers. Being so, if the restriction regarding doubling of the units is related to the plot size, it may cause great hardship to the villagers in having their dwelling units in such area. For example, if the plot consists of 5000 sq. metres of an area and there are already five dwelling units and on account of increase of family members, if they want to have more dwelling units the restriction of doubling would not permit them to construct more than five units in addition to the existing five units. For that purpose, they will have to have their dwelling units in different plot inspite of the fact that the land for construction of dwelling units

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within their plot is available. At the same time, since undue increase in the dwelling units is to be prevented, the restriction to the extent of 33% of the plot area is required to be observed. Bearing these in mind, therefore, it is difficult to relate the concept of doubling of the units to a plot. It will have to be considered as referable to the total number of units in the total area between 200 and 500 metres of HTL in a village. This is also clear from the very clause which speaks of "total number of dwelling units". While referring to the permissible construction or reconstruction between 200 and 500 metres of HTL, the expression used being "total number of dwelling units", obviously, it has to relate to the entire area situated between 200 and 500 metres of HTL in a village.

19. The Apex Court in **M.C.Mehta v. Union of India & Ors.,** reported in 2004 AIR SCW 4033, had clearly observed that the development has to go on because one cannot lose sight of the need thereof. However, while holding so, the Apex Court also ruled in favour of protection of environment and highlighted the need to strike the balance in that regard, and therefore, cautioned that :-

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"..... protection of environment

would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."

20. Going through the records placed before this Court in relation to the various constructions carried out after 19th February, 1991, particularly in the village of Candolim, it is apparent that in some cases, same person has been allowed to construct more than one unit when in fact some people have been allowed to construct shops, hotel rooms, etc. Permitting the construction of hotels or beach resorts in terms of the clause (ii) in the vacant plots within the said area is totally different from allowing the construction of hotel rooms and shops within the area which is required to be utilised for the construction of dwelling units. Certainly, construction of hotels and beach resorts would not be permissible within the locality wherein there exist the dwelling units. Hotel construction would be permissible only in the vacant plots situated within the said zone. The provision in that regard is very clear under claus

(ii), as also disapproval for such construction under the clause (iii) of the said CRZ Notification. Obviously, the respondent/authorities seem to have granted permission in disregard to the provisions comprised under the said Notification and in particular the clause (iii) thereof. The permissions appear to have been granted indiscriminately for all types of development in the area which is essentially meant only for construction or reconstruction of the dwelling units in accordance with the provisions of law comprised under the clause (iii) of the said CRZ Notification. Certainly, this is a clear violation of the CRZ Notification by the authorities, and therefore, would require necessary directions in that regard.

21. As regards the decision of the Apex Court in **K.S.Ratnaswamy's case (supra)** is concerned, undoubtedly, it refers to the meaning of the expression "dwelling place". However, that is with reference to the provisions under the Income Tax Act. Being so, that could not be of any help to understand the expression "dwelling unit" under the said Notification which does not relate to the tax matters but essentially relate to the construction activities in the fragile area covered by the CRZ Notification.

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22. The decision in **Jeewanti Pandey's case** (supra) refers to the expression "residence" and the meaning thereof, but the same is in relation to the provision under the Hindu Marriage Act. Obviously, therefore, it is of no help to the petitioners or the respondents in understanding the meaning of dwelling units under the said CRZ Notification.

23. The Apex Court in **Diksha Holdings Pvt.Ltd.'s case (supra)**, while indicating the approach of the Court which should be in the matters concerning environment and development, had taken notice of the decision of the Calcutta High Court in **People United for Better Living in Calcutta's case (supra)**, wherein it was held thus:-

> "There is no manner of doubt that this issue of environmental degradation cannot but be termed to be a social problem and considering the growing awareness and considering the impact of this problem on the society in regard thereto, in my view, Law Courts should also rise up to the occasion to deal with the situation as it demands in the present day context; Law Courts have a social duty since it is a part of the society and as such, must

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always function having due regard to the present day problems which the society faces. It is now a well-settled principle of law that socio-economic condition of the country cannot be ignored by a court of law. It is now a well-settled principle of law that while dealing with the matter, the social problems shall have to be dealt with in the way in the manner it calls for, since benefit to the society ought to be the prime consideration of the Law Courts and ecological imbalance being a social problem ought to be decided by a Court of law so that the society may thrive and prosper without any affection."

24. The Apex Court in the said **Diksha Holdings Pvt.Ltd.'s case (supra)** referring to its earlier decision in **Indian Council for Enviro Legal Action v. Union of India,** reported in (1996) 5 SCC 281, had observed that the Apex Court therein had indicated that with a view to protect the ecological balance in the coastal areas, notifications having been issued by the Central Government, there ought not to be any violation and the prohibited activities should not be allowed to come up within the area declared as CRZ

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notification. It was further ruled that "the Court also emphasised that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed and the Courts must scrupulously try to protect the ecology and environment and should shoulder greater responsibility of which the Court can have closer awareness and easy monitoring."

25. In **Gulf Goans Hotels Co.Ltd.'s case (supra)**, the Division Bench of this Court had held that the object of the legislation regarding protection of environment is to prevent degradation of the coastal areas including the sand dunes and ecologically sensitive areas. It was sought to be contended on behalf of the Panchayats by Mrs.Agni, the learned advocate appearing for the Panchayats that the contention that the construction activity in terms of the clause (iii) is permissible only by the locals has been rejected by this Court in the matter of **The Goa Foundation v. United Breweries & Ors.,** 2001(2)Goa L.T. 162 and the said issue stands finally decided. The contention is devoid of substance as the said decision nowhere deals with the said issue. It was only observed therein that though it was sought to be initially argued that the construction of the dwelling houses is permissible by the locals, in the course of

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argument, the same was not pressed, and that therefore, it was not necessary to be decided. In any case, it is nobody's case that the development is permissible by locals only. We are concerned with the limitations as prescribed under clause (iii) of the said notification.

26. It was sought to be argued that the restriction for construction of only dwelling units within the area of 200 to 500 metres of HTL would virtually deny the rights of development to the property holders and it would be contrary to the mandate of Article 300-A of the Constitution of India. This contention is also devoid of substance. Article 300-A of the Constitution certainly prohibits deprivation of property save by authority of law. However, imposition of restriction on development does not amount to deprivation of the property. The regulations which are provided under clause (ii) and the restrictions imposed thereunder do not in any way amount to dispossessing or taking away the property otherwise than by authority of law. It merely regulates the construction activities and does not amount to taking away somebody's property.

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27. Undoubtedly, the restrictions comprised under the said clause would discourage indiscriminate

construction activities in such areas. Merely because it will arrest the indiscriminate construction activities, that would not amount to prohibiting the development in such areas. Certainly, large-scale development is permissible in the area beyond the 500 metres of HTL. The restrictions have been imposed from the point of view of protection of environment and ecology and to avoid degradation thereof. Till and until the CRZ notification is in force, it has to be given effect in letter and spirit. Merely because some restrictions are imposed on the enjoyment of the property in relation to the construction activities in the coastal belt of 500 metres width, that by itself cannot amount to impose illegal or unwarranted or arbitrary restrictions. The restrictions are essentially for proper protection of the environment and ecology. It is well said that we have not inherited the earth from our fathers, but we have borrowed it for our children. Injudicious over exploitation of natural resources, including the land mass, would undoubtedly result in enormous degradation of the environment.

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28. As regards the point relating to the objection raised by the respondents on the ground of laches, it is to be noted that it is a public interest litigation. The matter pertains to indiscriminate

violation of CRZ notification and in particular relating to the CRZ-III zone. The Apex Court in **Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group & Ors.**, reported in 2006 AIR SCW 1392 had clearly ruled that the delay should not be the sole ground to throw out a public interest litigation irrespective of merit of the matter or the stage thereof and that keeping in view the magnitude of public interest, the court may consider the desirability to relax the rigours of the accepted norms relating to the applicability of rule of laches. In cases where the public authorities by misuse of their power try to virtually render the statutory provisions made for environment protection to be nugatory and act in a manner detrimental to the protection of environment in clear violation of the provisions of law made in that regard, the laches and delay cannot be a justification to give clean chit or carte blanche to such enemies of environment and allow them to go scot free at the cost of destruction of environment and ecology. No amount of delay can legalise the illegal acts, more particularly so, when the same relate to violation of environmental law and that too in relation to the CRZ-III zone.

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29. The Courts are not only empowered but are also duty bound, as the enforcing authority of the

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constitutional objectives to prevent all actions and activities, not only of the citizens but also of the State and public authorities which can upset or even affect the environmental balance. To protect and improve environment is the solemn duty of the every citizen, and albeit of the State and every public body. Environmental management while assuring due protection to the environment and ecology, is the obligatory function of every public body and that of the State, and in case of failure thereof, the Courts cannot remain to be silent spectators.

30. Undoubtedly during the period from 19th February, 1991 onwards the respondents authorities who were required to ensure proper implementation of CRZ notification did not bother to pay any attention towards performance of their obligation in that regard. The respondents have not bothered to give exact yearwise increase in dwelling units from 1991 onwards in CRZ-III zone in Goa. Considering the nature of controversy and their obligations under the Constitution and statutory provisions, the respondents were required to have all the data ready with them and ought to have disclosed the same to the Court, without waiting for the Court to inquire about the same. In fact, it appears that they have not bothered to maintain any record in that regard till this day. As

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regards the exact number of dwelling units which were there in the CRZ-III zone in Goa on 19th February, 1991 and datewise increase thereof subsequent thereto, undoubtedly the concerned authority will have to undertake necessary survey as well as inquiry, which shall include physical verification of the dwelling units in such area, taking into consideration of the panchayat records relating to payment of house taxes, ration cards of the residents in the concerned area, licences granted for construction or reconstruction in the said area on or after 19th February, 1991, census reports, etc. and various other evidence which could be of help in the preparation of such record. Based on such survey and inquiry the concerned authority will have to identify the number of dwelling units in CRZ-III zone in each of the coastal villages and towns of Goa, which were in existence on 19th February, 1991 and which have been built thereafter. In case the number of dwelling units are found to have increased in excess of double the units which were there on 19th February, 1991, then the authorities will have to identify those units with reference to the date of permission granted to them for such construction and to take necessary action in respect of such unit according to law. The authorities will have to also ascertain whether any hotel or shop or any structure other than dwelling unit had been permitted and

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constructed in such area, not in open plots, but in the locality comprised of dwelling units after 19th February, 1991 and to take appropriate action in relation thereto in accordance with the provisions of law. Of course, garage or a store room would form part of a dwelling unit. The respondents will have to identify whether there is any construction of the nature not permissible, has been permitted and/or constructed after 19th February, 1991 in the CRZ-III zone in Goa and to take action against the same in accordance with the provisions of law. Needless to say that rule of non-permissibility for construction other than dwelling house after 19th February, 1991 would not apply to such other structure which was already in existence in coastal zone on 19th February, 1991. The respondents are also required to take action against those who are responsible for violation of the provisions of CRZ notification in relation to the CRZ-III zone.

31. The concern shown by the petitioners for preventing degradation of environment and ecology in Goa and in particular on its coastal belt, specifically relating to CRZ-III zone is certainly appreciable.

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32. The fall-out of the above discussion is that

the petitions succeed. While making the rule absolute in above terms, we hereby give the following directions to the respondents:-

(A) To conduct survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing in the CRZ-III zone in Goa, village or townwise as on 19th February, 1991 and increase in number thereof thereafter, datewise.

(B) To identify on the basis of permission granted for construction of the dwelling units which are in excess of double the units with regard to those which were existing on 19th February, 1991.

(C) To identify all types of structures and constructions made in CRZ-III zone, except the dwelling units, after 19th February, 1991 in the locality comprised of the dwelling units and to take action against the same for their demolition in

accordance with the provisions of law.

(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilised for such construction activities.

1) All open/vacant plots cannot simply be used
2) Policy/ Identify
3) Conflicts.

(E) Till and until the survey and inquiry is completed, as directed above, no new licence for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/or

BOMBAY PANAJI BENCH ★ YOD ★

renovation of the existing houses.

(F) The respondent No.5 to conduct inquiry and fix responsibility for the violation of the CRZ notification in relation to clause-III of CRZ-III zone and to take appropriate action against the persons responsible for such violation of the provisions of the Environmental Protection Act and the said notification in relation to the CRZ-III zone.

(G) All these directions stated above are in relation to the CRZ-III zone in Goa in terms of the said notification.

(H) The survey and the inquiry should be conducted as expeditiously as possible and should be concluded preferably within a period of six months, and in any case, by 30th May, 2007, and report in that regard should be placed before this Court in the first week after the

Summer Vacation of 2007, for necessary further order, if any.

(I) Meanwhile, on conclusion of the survey and the inquiry, necessary action should proceed against the offending structures and report in that regard also should be placed along with the above referred report.

(J) The respondent Nos.3 and 4 shall ensure prompt compliance of the directions given in this judgment and shall be responsible for submitting the report required to be submitted as stated above.

(K) All the records relating to the survey and the inquiry should be made available to the public and in that regard a web-site should be opened and the entire material should be displayed on the web-site. The respondent No.3 should ensure due compliance of this direction by 10th June, 2007.

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(L) The respondent nos.1 and 3 shall pay costs of Rs.10,000/- in each of the petitions to the petitioners.

(M) Report to be received from the respondents should be placed before this Court in the third week of June, 2007.

(N) Rule is made absolute in above terms.

3456
17/10/06

CERTIFIED COPY

Date on which copy applied for 16-10-06
Date on which application completed 16-10-06
Date given fo... delivery 30-10-06
Date on which copy was ready 18-10-06
Date on which copy delivered
Cost of ... C.C.

Copying and ... charges — Rs. 2...
Total ... Rs. 2...

Section Officer
High Court at Bombay
Panaji Bench (Goa)

ITEM NO.52 COURT NO.1 Annexure "4" SECTION IX 12

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS 174793

Petition(s) for Special Leave to Appeal (Civil) No(s).6229/2007
(From the judgement and order dated 13/10/2006 in WP No. 99/1999 & WP No. 422/1998 of The HIGH COURT OF JUDICATURE OF BOMBAY AT PANAJI)

COMPETENT AUTOMOBILES COMPANY LIMITED Petitioner(s)

VERSUS

GOA FOUNDATION,REP.BY SEC.& ORS. Respondent(s)
(With appln(s) for placing on record addl.facts and directions and prayer for interim relief and office report)

WITH SLP(C) NO. 5400 of 2007
(With appln.(s) for permission to place addl.documents on record and with prayer for interim relief and office report)

Date: 07/04/2008 These Petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Certified to be true copy
Assistant Registrar (Judl.)
Supreme Court of India

For Petitioner(s) Mr.Mukul Rohtagi, Sr.Adv.
Mr.Dhruv Mehta, Adv.
Mr.Harshvardhan Jha, Adv.
Mr.Yashraj Singh Deora, Adv.
Mr.Gulshan Sharma, ADv.
For M/S K.L. Mehta & Co.,Advs.

For Respondent(s) NO.1 Mr.Sanjay Parikh, Adv.
Mr.A.N.Singh, Adv.
Mr.Jitin Sahni, Adv.
Ms.Mamta Saxena, Adv.
Ms. Anitha Shenoy,Adv.

For Respondent nos.3&5 Mr.Bhavanishankar V.Gadnis, Adv.
For Mrs.B.Sunita Rao ,Adv

UPON hearing counsel the Court made the following
O R D E R

1. The petitioner claims to be the owner of about 21 acres of land by the side of the sea in village Arossim in South Goa. It is stated that the land falls within the CRZ-III (ii). The petitioner proposes to construct a luxury

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hotel cum resort in the said land.

2. A public interest litigation had been filed by first respondent in the High Court of Judicature of Bombay, Bench at Goa, regarding the unauthorised constructions in the CRZ III. A Division Bench of the High Court allowed the said petition by judgment dated 13th October, 2006, and issued several directions, including the following (in paragraph 32 of the judgment) :

> "....(D) To identify the open plots in CRZ III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilisation thereof before they are being allowed to be utilised for such construction activities.
> (E) Till and until the survey and inquiry is completed, as directed above, no new license for any type of construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/or renovation of the existing houses....."

3. The petitioner was not a party to the said PIL. The said judgment was passed when the petitioner was in the process of applying for environmental clearance from the Ministry of Environment and Forests, for the hotel project. As the said directions amounted to a blanket ban preventing the authorities from considering any application by the petitioner, the petitioner has approached this Court by seeking permission to file this special leave petition. Such permission was granted.

4. By order dated 19.11.2007, this Court directed the Goa

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Coastal Zone Management Authority to submit a report about the environmental impact if the petitioner's plot is used for a hotel project. The Goa Coastal Zone Management Authority has accordingly examined the feasibility of the proposal for construction of a hotel in the said plot and has submitted a report dated 3.3.2008 (filed as an annexure to affidavit dated 13.3.2008). According to the petitioner, the said report is favourable for having a hotel project in its site.

5. Learned counsel appearing for the first respondent however, submitted that if the hotel project is cleared, large number of trees are likely to be cut and the sand dunes in the land will be flattened thereby adversely affecting coastal eco-system, apart from causing pollution. These are, in our opinion, issues which will have to be considered by the MoEF and other appropriate authorities who have to process the applications if and when filed by the petitioner(or already filed) while examining whether clearance has to be given for the project. The concerned authorities have also to examine whether the construction of the hotel is permissible in accordance with law. The first respondent would be at liberty to raise any objection to the proposed project before the MoEF or other appropriate authorities.

6. If all formalities are completed and in the event of the petitioner securing all clearances required for securing a licence for construction, the High Court may, on an application by the petitioner in the said proceeding for exemption/exclusion from the operation of the ban in para

32(E) of its judgment, pass appropriate orders.

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7. With the above observations, the special leave petitions are disposed of.

Sd/
(G.V.Ramana)
Court Master

Sd/
(Veera Verma)
Court Master

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IN THE HIGH COURT OF BOMBAY, AT GOA

WRIT PETITION NO. /2009.

M/s. Maha Seer Hotel & Resorts)
Pvt. Ltd., represented herein)
by Shri Natubhai Kotecha,)
Principal Officer, resident of)
Dr/ Shirodkar Road, Panaji-Goa) ..... **Petitioner.**

VERSUS

Union of India and three)
others.) ..... **Respondents.**

A F F I D A V I T

I, Shri Natubhai Kotecha, aged 63 years, Indian National, the Principal Officer of the Petitioner above named, resident of Panaji-Goa, do on solemn affirmation state and submit as under:-

(1) I say that I have filed today a Writ Petition before this Hon'ble Court.

(2) I say that the Annexures to the Writ Petition are the true copies of its originals.

(3) I say that what is stated by me in Paragraphs

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of the Writ Petition is true to my own knowledge and

belief and what is stated in the remaining Paragraphs, namely _____ are in the nature of legal submissions and/or inferences of facts, which I believe to be true.

(4) I say that what is stated by me in Paragraphs 1, 2 and 3 above is true to my own knowledge.

Solemnly affirmed at Panaji-Goa, on)
this 2nd day of May, 2009.)

DEPONENT.

Identified by me:-

Advocate for the Petitioner.

Annexure are with Total Compost (WP 509/2009) affidavit

IN THE HIGH COURT OF BOMBAY, AT GOA

WRIT PETITION NO. 292/2009

M/s. Maha Seer Hotel & Resorts)
Pvt. Ltd., represented herein)
By Shri Natubhai Kotecha,)
Principal Officer, resident of)
Dr./Shirodkar Road, Panaji – Goa) .....Petitioner

VERSUS

Union of India and ors) .....Respondents

AFFIDAVIT OF GOA FOUNDATION (Respondent No. 4)

I, Dr. Claude Alvares, Secretary, The Goa Foundation, Respondent No. 4 in the above petition, do solemnly state and affirm as under:

1. I have read the copy of the petition (No.292/2009) filed by Maha Seer Hotel & Resorts Pvt. Ltd. I am filing this brief affidavit to oppose the grant of any reliefs. I crave leave to file a more detailed affidavit should the petition be admitted.

2. The petition is based on a wrong assumption that it is similar in circumstances to those obtaining in the case of Competent Automobiles Pvt. Ltd (CAPL). CAPL also sought to gain approvals to construct a new resort in the face of directions given by this Hon'ble Court in its judgment and order dated 13.10.2006 in WP Nos. 422 of 98 and WP 99 of 1999 but was unsuccessful. The brief facts in the case of CAPL are as under:

a) CAPL first filed a petition in the Supreme Court against the order dated 13.10.2006. This was not entertained. However, the Hon'ble Apex Court by its order dated 4.12.2006 allowed CAPL to move the High Court. Accordingly, CAPL approached the High Court with a miscellaneous civil application (No.884/2006) which was heard and disposed off by this Hon'ble Court's order dated 13.3.2007. A copy of the order is hereto annexed to this affidavit as ***Exhibit 1***.

b) CAPL thereafter filed a second Special Leave Petition in the Supreme Court against this Court's orders dated 13.10.2006 and the order dated 13.3.2007. During the pendency of the petition in the Supreme Court, the Hon'ble Court was pleased to pass its order dated 19.11.2007. By the said order, the apex court directed the GCZMA (Resp.No.3 in the present petition) to file a report "in respect of the plot owned by the petitioner and its proposal to construct a hotel and the environmental impact if the plot is used for such hotel." Copy of the order dated 19.11.2007 is hereto annexed as ***Exhibit 2***.

c) It is only after these reports were produced in the Supreme Court that the order dated 7.4.2008 was passed by the Hon'ble Court. This order further directs the concerned authorities to examine, apart from the environmental implications of the project, whether construction of the hotel is permissible in accordance with law. If the MoEF granted approval, CAPL was still required to come back to the High Court.

d) To the information of petitioners, no such directions have been issued by the Supreme Court of India in the matter of the proposed hotel of the present petitioner. The Order dated 7.4.2008 is specific to CAPL and

cannot simply be used by all and sundry to attempt to dilute the effect of the High Court judgement dated 13.10.2006. Respondent submits that the GCZMA was right in refusing to forward the petitioner's proposal to the MoEF pursuant to the High Court judgement.

e) This Hon'ble High Court, having passed a final order and judgment dated 13.10.2006, which prohibits construction of hotels in CRZ III areas till such time as the State Government decides on the specific locations where beach resorts can come up, will not desert its own orders in order to entertain the present petition. This Court considered the matter fully in MCA No.884/2006 where it considered all the contentions raised by CAPL after which it passed its order dated 13.3.2007. It is important to reiterate that the Supreme Court looked at the matter in appeal from the orders of the High Court as the High Court could not intervene with its own final order and judgement.

3. In the present instance, therefore, the petitioners have wrongly filed the petition in the High Court. If they wish to have the precedent of CAPL applied in their case they must follow the same procedure as was followed by CAPL. Hence the petition ought to be dismissed as remedy does not lie before the High Court.

4. Despite the fact that the Supreme Court passed its order in CAPL on 7.4.2008, the Ministry of Environment has still not granted Environment Clearance for its project as the Ministry itself is also bound by the orders of this Hon'ble Court passed on 13.10.2006. The Hon'ble High Court has, in fact, in its order and judgement cast a responsibility on the Ministry to conduct an inquiry into who was responsible

for violation of the CRZ notification and to take appropriate action against the persons responsible.

5. The petitioner harps on the fact that the GCZMA (Resp. No. 3) approved the hotel in the year 2005, by its order dated 26-27/12/2005. I submit that the approval was wrongly granted as Mandrem CRZ, apart from the village settlement (gaothan), has been classified as CRZ-I in the approved Coastal Zone Management Plan because of the existence of sand dunes and turtle nesting sites. CRZ-I is a no development zone upto 500 Mts. from the HTL. Resp. No 4 has verified the fact that the Goa Coastal Zone Management Authority probably overlooked the fact that the site is a turtle nesting site under the approved CZMP. However, the Rapid EIA – which Resp.No.4 has obtained from the petitioner – ostensibly prepared in 2008, clearly records this fact (p.23). Since the Resp.No.3 did not consider or was ignorant of the fact that the plot was falling within a site demarcated for turtle nesting, its approval order dated 26-27/12/2005 is clearly in violation of the CRZ notification and the Coastal Zone Management Plan approved under the said notification. Resp.No.4 has objected to any further consideration of the proposal on the grounds that no resorts or development can be permitted in CRZ-I area.

6. The petitioner states that he has in the year 2004 and 2005 expended around Rs.16 crores for purchase of the properties on which he seeks to construct the resort. The CRZ notification was issued in February 1991. It clearly stipulates that development will follow the coastal zone management plan. The coastal zone management plan was approved pursuant to the directions of the Supreme Court in September 1996. If the petitioner has been wrongly advised or has made a wrong decision to purchase

property in a CRZ-I area, this cannot become the ground for permitting him nonetheless to pursue his proposal.

7. Finally, the petitioner states that the property purchased by him is in the settlement zone. However, the settlement zone as proposed in the Regional Plan of Goa cannot be equated with 'settlement' or 'gaothan' as defined in the CRZ notification and interpretation given in the judgment of this Hon'ble Court dated 13.10.2006. This Hon'ble Court has explicitly held that only the gaothan or fishing village can be construed as settlement for the purposes of CRZ III of the CRZ notification. Where there is no fishing settlement or gaothan, the area may be considered as vacant area. However, as there can be no restriction placed on turtles that come to nest in the area, the entire vacant area of Mandrem beach – which is practically a virgin beach – is designated CRZ I and no development is permitted upto 500 metres of the HTL.

8. In the circumstances, Respondent No. 4 submits that not only is the petition wrongly filed in this Hon'ble Court but even the grounds sought to be made out by the petitioner indicate that the project itself cannot be approved as it is in CRZ-I area being a turtle nesting site and so declared under the coastal zone management plan of September 1996.

Solemnly affirmed this
the _____ day of June, 2009 Deponent

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IN THE HIGH COURT OF BOMBAY, AT GOA

WRIT PETITION NO.292/2009

M/S. MAHA SEER HOTEL & RESORTS PVT. LTD.) ..... PETITIONER.

VERSUS

UNION OF INDIA AND OTHERS.) ..... RESPONDENTS.

AFFIDAVIT-IN-REJOINDER

I, Shri Natubhai Kotecha, aged 63 years, Indian National, the Principal Officer of the Petitioner above named, resident of Panaji-Goa, do on solemn affirmation state and submit as under:-

(1) I say that I have and understood the Affidavit filed on behalf of the Respondent No.4 and in response to the same, I crave leave to file the present Affidavit-in-Rejoinder.

(2) At the outset, I deny all and singular the averments set out in the Affidavit, to the extent the same are inconsistent with the case set out by me in the Petition. Nothing may therefore, be

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deemed as having been accepted, despite the fact that the same may have escaped specific denials.

(3) With reference to Paragraph 2 of the Affidavit, it is denied that the present Petition is based upon any wrong assumption as alleged to the extent Paragraph 2 of the Affidavit refers to the proceedings before this Hon'ble Court, as also the Hon'ble Supreme Court, the contents thereof are not denied. However, the inferences which the Respondent No.4 seeks to draw from the admitted facts are not admitted, but denied. In virtually similar circumstances, the Hon'ble Apex Court ruled that the issues relating to the grant of approval for construction of Beach Resort or otherwise needs to be considered by the MOEF, including the issue whether construction of the Beach Resort is permissible in accordance with law. At this stage, Respondent No.4 was also granted liberty to raise any objection to the proposed Project before the MOEF or other Appropriate Authorities.

In the circumstances, the Petitioner prays similar reliefs in the Petition, to which Respondent No.4 can have no legitimate objections. The attempt by the Respondent No.4 to classify the Petition into the bracket of 'all and sundry' is clearly unfortunate. I say that apart from the Petitioner having invested huge amounts in the Project, as law abiding entities, the Petitioner have approached the

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Competent Authorities for permission to put the Project. Further, the Petitioner have approached this Hon'ble Court with a view to seeking legal and legitimate relief. In the circumstances, the Petitioner ought not to be classified as 'all and sundry', merely because the Petitioner seeks to pursue the legitimate means for redressal. It is submitted that there is no appreciable distinction between the case of CAPL and the Petitioner, at least in so far as the basic factors are concerned. The fact that CAPL had first approached the Hon'ble Apex Court can by no means be a distinguishing feature. The Petitioner, in the first place, impleaded Respondent No.4 as a party to this Petition, though Respondent No.4 is neither necessary nor proper party. Such impleadment was a measure of fairness. Besides, Petitioner is not averse to the Respondent No.4 or for that matter, any other entity which purports to espouse public cause or public interest from raising the legitimate objections. However, it is submitted, with respect, that no such entity may be permitted to obstruct even fair consideration of the Petitioner's proposal to set up a Beach Resort, in accordance with law. To the extent, the Affidavit of the Respondent No.4 seeks to do this, it is submitted that same is liable to be discarded.

(4) With reference to Paragraph 3 of the Affidavit, the contents thereof are denied. The initial

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was not entertained by the Hon'ble Apex Court. In the circumstances, it is not at all necessary that the Petitioner follows the same procedure as was followed by CAPL, if they wish to have precedent of CAPL applied in their case.

(5) With reference to Paragraph 4 of the Affidavit, I say that Petitioner is unaware as to whether MOEF has issued the necessary Environmental Clearance to CAPL or not. In any case, said issue is entirely irrelevant. There is no dispute that all the authorities are bound by the Judgments of this Hon'ble Court as well as the Hon'ble Supreme Court of India. However, it is submitted with respect that any direction by the Hon'ble Supreme Court of India needs to be complied with by the authorities and such compliance cannot be resisted in the manner suggested by the Respondent No.4.

(6) With reference to Paragraph 5 of the Affidavit, it is submitted as under:-

(a) It is denied that the approval granted in the year 2005 was wrong.

(b) It is denied that the site at which the proposed Beach Resort is to be set up has been classified as CRZ-I in the Approved Coastal

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Zone Management Plan. It is denied that at the site there are sand dunes, turtle nesting sites as alleged. I say that said statement is incorrect to the knowledge of the Respondent No.4. In fact, the turtle nesting site is at a distance of almost 5 Kilometers (as the crow flies) from the Petitioner's property. The property is barren land and there are no sand dunes.

(c) It is denied that the Respondent No.4 has verified the aforesaid alleged fact or that the GCZMA has overlooked the aforesaid alleged fact.

(d) It is denied that the proposed site has been or can be classified as CRZ-I Area. It is denied that approval granted in the year 2005 is in any manner infirm.

(7) With further reference to Paragraph 5 of the Affidavit and without prejudice to what has been set out herein above, it is respectfully submitted that all the issues purported to have been raised by the

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Respondent No.4 in the said Paragraph 5 of the Affidavit can as well form apart of their objections before the MOEF, should this Hon'ble Court direct the MOEF to consider the Petitioner's Project proposal in accordance with law. It is submitted, that at this stage, it is premature for the Respondent No.4 to raise such objections, which even otherwise to the knowledge of the Respondent No.4 are baseless and unfounded.

(8) With reference to Paragraph 6 of the Affidavit, the contents thereof, to the extent they concern the so called wrong advice or wrong decision is denied. I say that Petitioner is desirous of carrying out development in accordance with law and that is the reason why the Petitioner had approached this Hon'ble Court seeking legitimate relief. In the name of espousing the public interest, the Respondent No.4 may not be permitted to thwart even consideration by the MOEF of the Project proposal. Further, as has been made clear by the Hon'ble Supreme Court in the CAPL case, even if the authorities grant necessary clearances for the Project, CAPL was required to approach the Hon'ble High Court seeking exemption/exclusion from the operation of the ban in Paragraph 32(E) of its Judgment dated 13/10/2006. The Petitioner, conscious of this position has already stated that the same course may be adopted in the case of the Petitioner. I say that this is without prejudice to

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the Petitioner's case that there is no ban contained in the Order dated 13/10/2006, to further consideration of Projects approved in the year 2005 itself.

(9) With reference to Paragraph 7 of the Affidavit, the contents thereof are again denied. Without prejudice, it is submitted that raising of such objection at this stage is premature.

(10) With reference to Paragraph 8 of the Affidavit, the contents thereof are denied. It is specifically denied that the site in question has sand dunes or that it is a turtle nesting site. It is denied that the site in question has been classified as CRZ-I in the GCZM Plan of September 1996 or otherwise.

(11) I say that to the best of my knowledge and belief, some time in January 2008, the officials of GCZMA inspected the Petitioner's property and site. The sight inspection report would bear out that the property is barren land, having no sand dunes and nowhere near any turtle nesting sites. The GCZMA may be directed to produce such inspection report for perusal of this Hon'ble Court.

(12) I say that what is stated by me in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the above Affidavit-in-Rejoinder is true to my own knowledge

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and/or as per the records available in the office of the Petitioner, which I believe to be true.

Solemnly affirmed at Panaji-Goa,)
on this 25th day of June, 2009.)

DEPONENT

Identified by me:

Advocate for the Petitioner.

ITEM NO.56 COURT NO.1 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6229/2007

(From the judgement and order dated 13/10/2006 in WP No. 99/1999 & WP No. 422/1998 of The HIGH COURT OF BOMBAY AT PANAJI)

COMPETENT AUTOMOBILES COMPANY LIMITED Petitioner(s)

VERSUS

GOA FOUNDATION,REP.BY SEC.& ORS. Respondent(s)

(With prayer for interim relief and office report)

WITH SLP(C) NO. 5400 of 2007
(With appln. for permission to place on record addl. facts with prayer for interim relief and office report)

Date: 19/11/2007 These Petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s) Mr. Mukul Rohtagi, Sr. Adv.
Mr. Dhruv Mehta, Adv.
Mr. Harshvardhan Jha, Adv.
Mr. Yashraj Singh Deora, Adv.
For M/S K.L. Mehta & Co.,Adv.

For Respondent(s) Mr. Sanjay Parikh, Adv.
Ms. Anitha Shenoy,Adv.
Mr. A.N. Singh, Adv.
Mr. Jitin Sahni, Adv.

For R.Nos.3,4 & 5 Mr. Bhavanishankar V. Gadnis, Adv.
For Mrs.B.Sunita Rao ,Adv

For R.Nos.3, & 5 Mr. Bhavanishankar V. Gadnis, Adv.
For Mrs.B.Sunita Rao ,Adv

...2/-

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

Learned counsel for the State Government submits that they would require further time to have survey report of South Goa. The petitioner's plot is situated in South Goa. A report in respect of the plot owned by the petitioner and its proposal to construct a hotel and the environmental impact if the plot is used for such hotel, shall be filed by the Goa Coastal Zone Management Authority within a period of four weeks.

List in the 1st week of January, 2008.

sd/-
(R.K.DHAWAN)
COURT MASTER

sd/-
(VEERA VERMA)
COURT MASTER

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 884 OF 2006.

Competent Automobiles
Company Limited, F-14, Competent House,
Connaught Place,
Middle Circle,
New Delhi – 110 001,
Through Shri Amit Gupta,
Chartered Accountant.

.... Applicant

Versus

Panchayat of Candolim
and Others.

.... Respondents.

Mr. Mukul Rohatgi, Senior Advocate with Mr. Dhruv Mehta and Mr. Sudin Usgaonkar, Advocates for the Applicant.

Mrs. N. Alvares, Advocate for the Original Petitioner/Respondent.

Mr. S.S. Kantak, Advocate General with Ms. G. Bhonsule, Addl. Government Advocate for the Original Respondents No.3 and 4.

Mr. E.P. Badrinarayanan, Central Government Standing Counsel for the Original Respondent No.5.

Mr. M.S. Sonak, Advocate for the Original Intervenor.

CORAM: S. A. BOBDE, &
N. A. BRITTO, JJ.

DATE: 13th MARCH, 2007.

ORAL ORDER: (PER S.A. BOBDE, J.)

On 13th October, 2006 a Division Bench of this Court gave certain directions to the respondent-authorities, inter alia, to conduct a survey and inquiry as regards the number of dwelling units and all other structures and constructions which were existing as on 19th February, 1991 in the CRZ-III zone in Goa, village or

townswise ; to identify all types of structures and constructions made in CRZ-III zone, and further to identify such constructions which are made in excess of double the dwelling units. While giving these directions, what is relevant in this application is that this Court further directed that identification be done of open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization before they are allowed to be utilized for such construction activities; and further directed that till such survey and inquiry is completed, no license for any type of license for any type of construction in CRZ-III zone be issued or granted and no new structure of whatsoever nature be allowed to be be granted in the CRZ-III zone.

2. The Applicant who intends to develop an open plot in its possession and construct a hotel thereon in the CRZ-III zone has applied to this Court, inter alia, for a review of the aforesaid directions for a survey and identification of open plots for construction of a hotel and the direction which bars it from making any application for construction of hotel, pending the survey directed by this Court.

The directions of this Court in the said Judgment which come in the way of the Applicant are (D) and (E) which read as follows :-

> "(D) To identify the open plots in CRZ-III zone which are available for construction of hotels and to frame appropriate policy/regulation for utilization thereof before they are being allowed to be utilized for such construction activities.
>
> (E) Till and until the survey and inquiry is completed, as directed above, no new license for any type of

construction in CRZ-III zone shall be issued or granted, and no new structure of whatsoever nature shall be allowed to be constructed in CRZ-III zone, except repairs and renovation of the existing houses which shall be subject to the appropriate order on completion and result of the survey and inquiry to be held as directed above and this should be specifically stated in the licenses to be granted for the purpose of repairs and/ or renovation of the existing houses. "

The Applicant was not a party to the petition in which this Court rendered the Judgment dated 13th October, 2006. It therefore applied to the Supreme Court of India for permission to prefer a Special Leave petition against the said Judgment. On 4.12.06 their Lordships passed the following Order :-

" At this stage, we are not inclined to considered the prayer for permission to file the special leave petition. We will keep this matter pending. In the meantime, the petitioner is permitted to approach the High Court. Liberty is given to mention the matter before this Court later, if need be. "

In pursuance of the liberty, the Applicant has moved the present application.

2A. These directions were made at the instance of the Petitioner in Writ Petition No. 422/1998 i.e. The Goa Foundation, hereinafter referred to as the Petitioner.

3. Mr. Rohatgi, the learned counsel for the applicant submitted that the Petitioner had moved this Court for relief only in respect of the unauthorized construction of dwelling units and not in respect of unauthorized constructions in respect of hotels and therefore the directions at (D) and (E) reproduced above are beyond the scope of the petition and need to be recalled in the interest of justice.

4. In order to appreciate the contention, it is necessary to advert to the CRZ Notification in question. The relevant clause of the Coastal Area Clarification and Development Regulations are in Clause 6(1), CRZ-III. The provisions in regard to construction is as follows :-

No-Development: In CRZ-III is the area upto 200 metres from the High Tide Line is a 'No-Development Zone' vide clause (i).

Hotels/Beach Resorts: All the vacant plots may be developed between 200 and 500 metres from the High Tide Line with prior approval of the Ministry of Environment and Forests (MEF) for construction of hotels/beach resorts for temporary occupation of tourists subject to the conditions as stipulated in the guidelines at Annexure-II vide clause (ii).

Dwelling Units: Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line is permitted, so long it is within the ambit of traditional rights and customary uses such as area meant for dwelling units that is presumably existing villages and gaothans. The construction of hotels is regulated by Clause (ii) and the construction of dwelling units by Clause (iii).

5. The petitioner's contention i.e. of the Goa Foundation before this Court was primarily that there are gross violations of clause (iii) in relation to construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line. According to the petitioner, inter alia, the condition that the total number of dwelling units shall not be more than twice the number of units etc. have been violated. The petitioner also pointed out several other violations which are not set out in detail in this order. Primarily, the petitioner thus referred to violation of clause (iii). The prayer clause in the petition were likewise, mainly in relation to clause (iii). The petitioner . The petitioner sought orders restraining the respondents from granting new permission for residential units in the CRZ of Calangute except in accordance with clause (iii) and for a direction to remove all construction in violation of the said clause. The petitioner also sought other directions to restrain the respondent from approving other residential construction in CRZ-III of the rest of the coastal villages in Goa, except in accordance with clauses (ii) and (iii).

Sub-Clauses (ii) and (iii) which regulate the construction of hotels and dwelling units respectively, in respect of which the petitioner sought relief read as follows :-

> " (ii) Development of vacant plot between 200 and 500 metres of High Tide Line in designated area of CRZ-III with prior approval of Ministry of Environment and Forests (MEF) permitted or construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(iii) Construction/reconstruction of dwelling units between 200 and 500 metres of the High Tide Line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities. "

6. While deciding this petition, this Court noticed the contention of the petitioner several facts pertaining to the alleged illegal construction. This Court noticed certain

constructions which were meant to be for dwelling units were being used for the purpose of hotels. The Court noticed that some people have been allowed to construct shops, hotel rooms, etc. in the village of Candolim. The Court considered the phenomenon of hotels in the village areas. In paragraph 20 the Court observed as follows :-

> ". 20. Going through the records placed before this court in relation to the various constructions carried out after 19th February, 1991, particularly in the village of Candolim, it is apparent that in some cases, same person has been allowed to construct more than one unit when in fact some people have been allowed to construct shops, hotel rooms, etc. Permitting the construction of hotels or beach resorts in terms of the clause (ii) in the vacant plots within the said area is totally different from allowing the construction of hotel rooms and shops within the area which is required to be utilized for the construction of dwelling units. Certainly, construction of hotels and beach resorts would not be permissible within the locality wherein there exist the dwelling units. Hotel construction would be permissible only in the vacant plots situated within the said zone. The provision in that regard is very clear under clause (ii), as also disapproval for such construction under the clause (iii) of the said CRZ Notification. Obviously, the respondent/authorities seem to have granted permission in disregard to the provisions comprises under the said Notification and in particular the clause (iii) thereof. The permissions appear to have been granted indiscriminately for all types of development in the

area which is essentially meant only for all types of development in the area which is essentially meant only for construction or reconstruction of the dwelling units in accordance with the provisions of law comprised under the clause (iii) of the said CRZ Notification. Certainly, this is a clear violation of the CRZ Notification by the authorities, and therefore, would require necessary directions in that regard. "

7. This Court thus unequivocally observed that construction of hotels and beach resorts would not be permissible within the locality where there exist dwelling units. It appears to have been the view of this Court that the vacant land on which hotels can be built cannot be vacant lands within the area meant for dwelling units, that is to say the villages and gaothans , vide Clause (iii) above.

8. In order to give effect to the view, it was therefore necessary to identify all the open plots in the CRZ zone which were available for construction of hotels long with other types of construction and structures made in the CRZ-III zone. The Court, therefore, directed a survey to be conducted and concluded within a period of six months and in any case by 30th May, 2007. In order to preserve the status quo the Court directed that until survey and inquiry is completed, no new licenses for any type of construction in the CRZ zone shall be issued or granted vide direction (E). It is in this context that the embargo came to be placed on permissions for construction of hotels. Thus even though the learned counsel for the applicant may be correct in submitting that the permission to construct a hotel on a vacant land is treated differently from the permission to construct a dwelling unit in an existing village, in the context of this case it was felt necessary for the Court to make observations regarding where a hotel can be constructed and that it cannot be in an area where there are

dwelling units, that is presumably the villages. It is in this context that the aforesaid observations appear to have been made.

9. Undoubtedly, even according to the applicant, this Court has power under Article 226 to grant relief in terms wider than those strictly prayed for in the petition. In this case it appears that the relief has not been granted wider than that prayed for since the Court has made observations regarding where hotels can be constructed by holding that they cannot be constructed in a village. Thus while deciding upon the validity of the constructions under Sub-Clause (iii) which deals with construction of dwelling units within traditional rights such as existing fishing villages and gaothans, this Court was of the view that construction of hotels would not be permissible when there exist fishing villages. This is still an adjudication of what can be permitted to be constructed under Sub-Clause (iii) which was the primary focus of the Writ Petition.

10. We are, therefore, of view that there is no merit in the contention that the Judgment of this Court suffers from a mistake or error of law, apparent on the face of record and which falls for review of the Judgment and recall of certain directions given at (D) and (E).

11. At this juncture, it may be noted that it would not be appropriate to grant the Applicant liberty to apply for permission to construct the hotel in view of the fact that the survey would be completed in about two months from now, that is, by May, 2007, as directed by this Court. The Applicant has declined an offer from this Court that it may apply for permission to construct the hotel, subject to the directions at (D) and (E) above and subject to the fate of these directions in the petition and Special Leave

Petition, they have sought to prefer before the Supreme Court of India.

12. In view of the above, we reject the Misc. Civil Application No. 884/2006.

S.A.

S. A. BOBDE, J.

N.A.

N. A. BRITTO, J.

sl.

10/12/2009

Adv. Sanjay Pankh.

Ref: Mahaseer case.

Enclosed:

(1) Affidavit of Claude Alvares (notarized)

(2) Statement

(3) Order of HC dated 13 March 2007 (in Competent Auth)

(4) SC Order dated 19 Nov. 2007 (in Competent Auth)

(5) Extract of EIA for Maharseer

(6) Town Planning letter to GC2MA (Mahaseer is in list of No. 3)

(7) GC2MA decision of 2005 re. the same resort (Daniel Moses referred to in the decision is the predecessor of Mahaseer)

Extract

AGENDA FOR THE 24th MEETING OF THE GOA COASTAL ZONE MANAGEMENT AUTHORITY

ITEM NO.: 1

Confirmation of the Minutes of the previous meeting

Confirmation of the Minutes of the 23rd Goa Coastal Zone Management Authority (GCZMA) meeting held on 1st September 2005 (Thursday) at 4:00 p.m. in the Conference room of the Chief Secretary at the Secretariat, Alto-Porvorim.

Certified copy of the document
available in office records

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

ITEM NO.: 2

1. *Case deferred during the 22nd meeting*

PROJECT: Proposed construction of a Beach Resort in Survey Nos. 210, 211/1 & 2 & 212 of Mandrem village, Pernem Taluka by Shri Daniel Moses. (GCZMA/N/453)

The case was deferred for site inspection to check its location vis-à-vis the turtle nesting grounds on the Morjim beach. The site was inspected by Dr. A.G. Untawale, Member (GCZMA) alongwith official of GCZMA office.

2. *Cases deferred during the 23rd meeting*

During the 23rd meeting the following cases were deferred pending the submission of certain details:

CASE NO: 1

PROJECT: Proposed construction of a Beach Resort in Survey No. 148/2 of Calangute village, Bardez Taluka, by Shri Eliot Gonsalves. (GCZMA/N/482)

CASE NO: 2

PROJECT: Proposed construction of a Hotel project in Survey No. 53/4 of Velsao village, Mormugao Taluka, by Dr. Ivo Barbosa. (GCZMA/S/271)

CASE NO: 3

PROJECT: Proposed extension of an existing Hotel in Survey Nos. 113/3, 114/1 & 115/1 of Arossim village, Salcete Taluka, by M/s Select Holiday Resorts Pvt. Ltd. (GCZMA/S/259)

from the MoEF (GoI), the final site plans of the said projects shall be endorsed only on incorporation of full details with respect to the systems contemplated for rainwater harvesting, solid waste 'treatment/ disposal' and supplemental use of renewable sources of energy.

Project Proposals to be referred for the clearance of MoEF(GoI)

CASE NO: 1

PROJECT: Proposed construction of a Beach Resort in Survey Nos. 210, 211/1 & 2 & 212 of Mandrem village, Pernem Taluka by Shri Daniel Moses. (GCZMA/N/453)

CASE NO: 2

PROJECT: Proposed construction of a Beach Resort in Survey No. 148/2 of Calangute village, Bardez Taluka, by Shri Eliot Gonsalves. (GCZMA/N/482).

CASE NO: 3

PROJECT: Proposed construction of a Hotel project in Survey No. 53/4 of Velsao village, Mormugao Taluka, by Dr. Ivo Barbosa. (GCZMA/S/271).

CASE NO: 4

PROJECT: Proposed extension of an existing Hotel in Survey Nos. 113/3, 114/1 & 115/1 of Arossim village, Salcete Taluka, by M/s Select Holiday Resorts Pvt. Ltd. (GCZMA/S/259)

....3

Extract of 24th GCZMA meeting minutes held on 2nd December, 2005

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

CASE NO: 5

PROJECT: Proposed construction of a Hotel project in Survey No. 363/1(Part) of Benaulim village, Salcete Taluka, by M/s Reliance Builders. (GCZMA/S/246).

CASE NO: 6

PROJECT: Proposed construction of a Hotel project in Survey No. 57/2 of Colva village, Salcete Taluka, by Smt. Yvett Almeida Coutinho (GCZMA/S/245)

CASE NO: 7

PROJECT: Proposed construction of a Hotel project in Survey No. 131/2 to 5 and 132/5(Part) at Nagorcem-Palolem, Canacona Taluka, by Shri Prakash Gokuldas Naik. (GCZMA/S/276)

ITEM NO.: 3

New proposals for the consideration of the Authority.

Eight new project proposals (listed below) were placed before the members for consideration and approval. The decisions taken case wise are as under:

CASE NO.: 1

PROJECT: Proposed construction of a Dry Dock facility to the existing barge repair yard in Survey No. 310/3 of Rassaim, Loutulim village, Salcete Taluka. (GCZMA/S/84)

DECISION: Deferred for seeking more information.

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

CASE NO.: 2

PROJECT: Proposed construction of a Hotel project in Survey No. 132/12,13,19,20,24 of Calangute village, Bardez Taluka, by Primavera Developers. (GCZMA/N/505)

DECISION: The project was approved for onward submission to the MoEF (GoI) for environmental clearance.

CASE NO.: 3

PROJECT: Proposed Beach Resort for M/s. Gaffino Ventures (India) Ltd. in Survey No. 143/8 of Cavelossim village, Salcete Taluka. (GCZMA/S/287).

DECISION: The project was approved for onward submission to the MoEF (GoI) for environmental clearance.

SITE INSPECTION REPORT

1. Date & time of inspection: 30/01/08; Time: 17.00 hr.

2. Name of the project: Construction of Hotel Maha Seeve

3. Location:
Survey No. 210, 211/1, 211/2, 212 Village: Mandrem Taluka: Pernem
Chalta No. _____ P.T. Sheet No: _____ Town: _____

4. Detailed description of status of adjoining properties:
The property is extending from the Arabian Sea Coast in the West to the hill of the in the east. There is Temple in adjoining property in the north, while there are few houses in the property in the south, bordering the sea.

5. Existing Land Use:
The proposed site is a barren land

6. Accessibility:
Accessible by a tarred road

7. Topography:
Type of soil: Sandy, Rocky, Clay, Lateritic etc.
Topography: Plain, Undulating, Gently sloping, Cliff etc.
Existence of Sand dunes: ~~Yes~~/No
If Yes, Number of dunes in the property: N A
Height of the dunes: N A
Slope:
Whether the dunes are virgin or tampered: Yes/No N A
If Yes, give details
N A

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

Whether any lagoons, backwaters, or other water bodies exist in the plot.

No

(The location of sand dunes and water bodies should be marked on the site plan)

8. Vegetation:
Pioneer vegetation like bushes, creepers and grasses:
Secondary vegetation like coconut, casuarina or other trees.
Mangroves: No mangroves
Any other vegetation or trees:
There are few coconut trees in the coastal area while there is a cashew plantation on the hilly portion

9. Distance of seaward boundary from river/sea High Tide Line:
The site of the proposed construction lies beyond 200m from HTL of Arabian Sea i.e. between 200m and 500m from HTL on the landward side of the tarred cutting across the property. It is CRZ-III

...2/-

10. Existing structures within the plot:
There exists an elongated (north-south) structure of masonry walls and Mangalore Tiles. There is another structure of laterite stone masonry without roof. There a succhwala well of square cross section

11. Whether any proposed work has been carried out at the site: (a brief description of the type and extent of the work carries out)

No

12. Whether any traditional access through the plot exists:
A laterd road is crossing the property in the North-south direction

13. Any other information about the site that is relevant to the environment:
The site of the proposed Hotel lies beyond 200m of HTL

Date: 30/01/2008
Place: Mandrem

(Dr. Simon de Souza)

Signature, Name and Designation
Member, GCZMA

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

CERTIFIED TRUE COPY

NOTARY
Mrs. Meera Medhekar
Whole Goa Division
Panaji, Goa.
Regd. No. 108/99
GOVT. OF GOA (INDIA)

TOWN & COUNTRY PLANNING DEPARTMENT
GOVERNMENT OF GOA.
PERNEM TALUKA BRANCH OFFICE

LAND USE/ZONING INFORMATION

Ref. No: MANDREM-01/210-0/212-0/211-1/PER/TCP-07/324 Dated: 4/09/2007

The land use/Zoning of the property bearing Sy. No. 210/0,212/0 & 211/2 of Mandrem village of Pernem Taluka admeasuring 2, 11,153 m2. As per Regional Plan 2001 AD are as follows:

- **Survey No. 210/0 & 211/2 ---- Orchard Zone.**
- **Survey No. 212/0 ---- Partly Orchard/Partly Cultivable**

However, the change of zone has been granted by the Govt. from Orchard to Settlement (Beach resort) for an area of 2,15,800 m2 bearing sy. no. 210, 211 and 212 of village Mandrem, Pernem Taluka communicated vide letter no. DA/272/TCP-92/323 dt. 24/4/92 as per the information supplied by the applicant.

This information is issued based on the application received from Maha Seer Hotels & Resort Pvt. Ltd. dated 18/05/2007 to be read with note given below:

This information is valid only for six months from the date of issue of this letter or revision of the respective plan, whichever is earlier.

Processing fees Rs.6000/- paid vide Challan No. 7 dated 17/05/2007.

Yours faithfully,

Vinod Kumar

(Vinod Kumar)
Dy. Town Planner.

To,

Maha Seer Hotels & Resort Pvt. Ltd.
C/o. Shri Natubhai N. Kotecha,
Dr. Shirodkar Road,
Near Hotel Nova Goa,
Panaji Goa-403001.

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

Note:- The land use /zone information provided is as per Regional Plan /ODP/Zoning Plan in force as on date of issue of the above information and shall not be construed as NOC in any form for undertaking any development including construction, Sub-Division, etc.

Further any development shall be subject to provision of Tenancy Act, Land use Regulation Act, Forest Conservation Act, Highways Act, Ancient monuments and Archaeological Sites and Remains Act, (State and Central), EIA notification issued by MOEF, Coastal Regulation Zone, including Section 17 A of the TCP Act.

Ref. No. OA/272/TCP-92/3231
TOWN AND COUNTRY PLANNING DEPTT.
GOVERNMENT OF GOA,
GANGA NIWAS,
PANAJI - GOA - 403 002.
Dated: 24/4/92

(104)

To,
Shri Sanjay Ganguli,
General Manager,
Indian Group of Companies,
Reg.Off. 72, Janpath,
New Delhi - 110 001.

Sub: Change of landuse in survey no. 210, 211 and 212 of Mandrem in Pernem for permitting the development/change of use of land on Regional Plan from Orchard to Settlement (Beach Resort) Area 215800 M2.

Sir,

With reference to the above, I am to inform you that the Govt. have conveyed its approval for change in the land use on Regional Plan on sy.no. 210, 211 & 212 of Mandrem from Orchard to Settlement(Beach Resort) for an area admeasuring 215800 sq.m. vide letter no. 4-5-90-UDD dated 25.3.92. The following shall be followed:-

1) No construction is permissible within 200m of H.T.L.
2) The plans be drawn as per the Environment Regulations & guidelines and other bylaw applicable to the site.
3) Final clearance from the Goa State Committee on Environment shall be obtained before starting construction/development.

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

Town Planner,

(N. Pandalai)
Chief Town Planner
&
Member Secretary, TCPB

Copy to the following with information that no permission/licence/sanad be granted till the final clearance of the C.S.C.E. is conveyed to you.
1) Senior Town Planner (North), Mapusa, Goa.
2) Dy. Collector (North), Mapusa, Goa.
3) [illegible]

MOST IMMEDIATE

Member Secretary
G.C. 1694/F
Inward
Date 08/10/2007

Ref: 27/33/TCP-07/3359
Town & Country Planning Dept.
Dempo Tower, 2nd Floor,
Patto Plaza,
Panaji Goa
Date: 5/10/07

To,
The Member Secretary (GCZMA),
Director/Ex-officio Joint Secretary (DSTC),
Department of Science Technology & Environment,
Govt. of Goa,
Opp. Saligao Seminary,
P.O. Saligao, Bardez – Goa – 403511.

Sub:- Issuing NOC for Conversion of land use in CRZ zones.

Ref:- Your letter No. GCZMA/L.C./07/GEN/3123 dated 27/9/2007.

Sir,

This has reference to your above mentioned letter in connection with conversion of land use in CRZ zones. There appears to be some misunderstanding in what is stated in the first para or your letter.

As you know this office does not recommend any change of zone nor recommends any change of zone or landuse, as the said procedure has been discontinued by the Govt.

Further, as per the earlier procedure followed by your office you were approving the projects, we presume based on Coastal Zone Management Plan for Goa and only based on recommendations of your office and after due procedure NOCs from planning point of view are issued by the office.

Further, most of the plots falling within 500 mts. from the coast do not fall in settlement zones as per Regional Plan – 2001, presently followed and as such we would be in not in a position to recommend NOCs for development in such areas.

27 Nos. files as per the list are returned alongwith this letter.

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available in office records

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

Yours faithfully,

(Morad Ahmad)
Chief Town Planner

Encl: As above.

LIST OF 27 NOS FILES ENCLOSED

1. Smt. Isabella Fernandes, Sy. No. 144/12 Candolim-Bardez-Goa.
2. Miss. Meera Joquim Fernandes, Sy. No. 105/3-B Nagarcem Palolem,Canacona-Goa.
3. M/s Maha Seer Hotels & Resorts Private Ltd. Sy. No. 210,211/2 & 212 Mandrem village, Pernem taluka.
4. Mr. Shakeel Ladak, Sy. No. 132/2 Candolim-Bardez-Goa.
5. Kyle Developers pvt. Ltd. Sy. No. 54/2 of Chicalim village Mormugao taluka.
6. Miss Poornima Candolkar Sy. No. 135/11 of Candolim village Bardez taluka.
7. Mrs Maria Angelina J. D'Souza, Sy. No. 237/2 of Anjuna village Bardez taluka.
8. Mr. Domn c nascarenhas, Sy. No. 146/5 of Calangute village Bardez taluka.
9. Indu Bala Bhatia, Sy. No. 118/1-I of Morjim village Pernem taluka.
10. Mr. Pramod Jolly, C/o Papa Jolly Sy. No. 187/31 of Morjim village Pernem taluka.
11. Valentin Manuel Fernandes, Sy. No.187/3,4,5,6,7,8,9, of village Morjim Pernemtaluka.
12. Luis & Erian Retreat Pvt. C/o Papa Jolly, Sy. No. 191/27,28,50 of Morjim village Pernem taluka.
13. Mr. Pramod Jolly, C/o Papa Jolly Sy. No. 187/33 of Morjim village Pernem taluka.
14. Ancel Anant Verman C/o Papa Jolly, Sy. No. 208/1 of Morjim village Pernem taluka.
15. Mr. Pramod Jolly, C/o Papa Jolly, Sy. No. 187/32 of Morjim village Pernem taluka.
16. Mrs Philomena Fernandes, Sy. No. 248/7 of Calangute village Bardez taluka.
17. Mr. Pramod Jolly, C/o Papa Jolly Sy. No. 187/35 Of Morjim village Pernem taluka.
18. Mr. Pramod Jolly C/o Papa Jolly Sy.No. 187/37 of Morjim village Pernem taluka.
19. Mr. Pramod Jolly C/o Papa Jolly, Sy. No. 187/36 of Morjim village Pernem taluka.
20. M/s Skyrise Infratech Pvt Ltd. C/o Papa Jolly Sy. No. 204/4 of Morjim village Pernem taluka.
21. Amit AmarjeetsinghNirankari, Sy. No. 187/38 of Morjim village Pernem taluka.
22. M/s Skyrise Infratech Pvt Ltd. C/o Papa Jolly Sy. No. 203/12of Morjim village Pernem taluka.
23. Mr. Pramod Jolly, C/o Papa Jolly, Sy. No. 187/34 of Morjim village Pernem taluka.
24. Amit AmarjeetsinghNirankari, Sy. No. 203/26 of Morjim village Pernem taluka.
25. Amit AmarjeetsinghNirankari, Sy. No. 187/39 of Morjim village Pernem taluka.
26. Amit AmarjeetsinghNirankari, Sy. No. 203/7 of Morjim village Pernem taluka.
27. Mr. Caetano Rodrigues Sy. No. 41/1-C of Colva village Salcete Taluka.

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

SITE INSPECTION REPORT

1. **Date & time of inspection**: 08th October 2005.

2. **Name of the project**: Proposed hotel project by Daniel Moses.

3. **Location**:

Survey No. 210,211/1 & 2 &212 Village: Mandrem Taluka: Pernem

Chalta No. - P. T. Sheet No: - Town: -

4. **Detailed description of status of adjoining properties**:

North: - Existing houses & vacant land.

South: - Existing house & vacant land

East: - Vacant land.

West: - Existing panchayat road and Sea Coast.

5. **Existing Land Use**: Barren land with sparse vegetation classified as "settlement".

6. **Accessibility**: Existing Panchayat road.

7. **Type of Land**:

Soil: Mixed rocky and lateritic soil.

Topography: Plain & Gently sloping.

Existence of Sand dunes: No sanddunes exist in the plot.

Whether any lagoons, backwaters, or other water bodies exist in the plot: Nil

8. **Vegetation**:

Pioneer primary vegetation: bushes, creepers and grasses:

Secondary vegetation: like coconut.

Mangroves: None.

Any other vegetation or trees: N.A.

9. **Distance of seaward boundary from 'river/sea' High Tide Line**:

Plot is abutting the seacoast. However the proposed construction is beyond 200 mts. from the HTL, on a rocky latritic terrain atleast three meters above the beach level. As such, the beach ecosystem is not influenced by the proposed development.

10. **Existing structures within the plot**: Four old structures and one temple

11. **Whether any proposed work has been carried out at the site**: (a brief description of the type and extent of the work carried out):Nil

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available in office records

...2/-

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

11. **Whether any traditional access through the plot exists:**

There is a Panchayat road passing through the plot.

13. **Any other information about the site that is relevant to the environment:**

The hotel project is proposed beyond 200 mts from the HTL and is on the landward side of the existing road.

Dated:
Place:

Signature _____ Signature _____

_____ _____

Name and Designation Name and Designation

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available in office records

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

C/71

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Science, Technology & Environment,
Opp. Saligao Seminary, P.O. Saligao, Bardez, Goa - 403 511
Phone: (0832) 2407186, 2407187, 2407189 Fax: (0832) 2407186

REF. NO.: GCZMA/N/453/835 DATE: 13/05/2005

To,

Shri Daniel Moses,
S-2 Paradise Apts.,
Miramar, Panaji - Goa.

Sub: Proposed construction of a Beach Resort in Survey Nos. 210, 211/1&2 & 212 of Mandrem village, Pernem Taluka.

Sir,

This has a reference to your application No. NIL dated04/04/2005 concerning the above mentioned proposal for a Beach Resort. The case was placed before the Goa Coastal Zone Management Authority (GCZMA) in its 22nd meeting held on 22nd April 2005. The proposal was discussed in details vis-à-vis its location at Mandrem Village where a substantial area along the shore is classified as CRZ-I due to the presence of turtle nesting grounds.

Consequently, it was decided to defer your proposal for further examination.

Certified copy of the document
available in office records

MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

Yours faithfully,

(Dr. N.P.S. Varde)
Member Secretary, GCZMA

O/C

Extract of the Minutes of the 22nd GCZMA meeting held on 22.04.2005.

C/69

CASE NO: 3

PROJECT: Proposed construction of a Beach Resort in Survey Nos. 210, 211/1&2 & 212 of Mandrem village, Pernem Taluka, by Shri Daniel Moses. (GCZMA/N/453).

DECISION: The project proposal was discussed in details vis-à-vis its location in Mandrem village, where a substantial part of the coastal tract is classified as CRZ-I due to the presence of turtle nesting grounds. It was opined that pristine areas in the vicinity of such ecologically sensitive zones should be protected against indiscriminate development activities. Even if development is proposed beyond the coastal zone by a beach resort, the intensified use of the beach for human activity will pose a threat to turtle nesting and therefore certain such zones should be excluded from tourism and other such human intensive development. Consequently, it was decided to deliniate such areas and notify the same for vide publicity, to avoid dead investments, coordinating in this regard for area beyond 500 mts. with the Town and Country Planning Department.

The proposal in question was therefore deferred for further examination, in the light of the above decision.

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

NOTARY
Mrs. Meera Medhekar
Whole Goa Division
Panaji, Goa.
Regd. No. 108/99
GOVT. OF GOA (INDIA)

CERTIFIED TRUE COPY

TOWN & COUNTRY PLANNING DEPARTMENT
GOVERNMENT OF GOA.
PERNEM TALUKA BRANCH OFFICE

LAND USE/ZONING INFORMATION

Ref. No: MANDREM-01/210-0/212-0/211-1/PER/TCP-07/324 Dated: 4/09/2007

The land use/Zoning of the property bearing Sy. No. 210/0,212/0 & 211/2 of Mandrem village of Pernem Taluka admeasuring 2. 11,153 m2. As per Regional Plan 2001 AD are as follows:

- **Survey No. 210/0 & 211/2 ---- Orchard Zone.**
- **Survey No. 212/0 ---- Partly Orchard/Partly Cultivable**

However, the change of zone has been granted by the Govt. from Orchard to Settlement (Beach resort) for an area of 2,15,800 m2 bearing sy. no. 210, 211 and 212 of village Mandrem, Pernem Taluka communicated vide letter no. DA/272/TCP-92/323 dt. 24/4/92 as per the information supplied by the applicant.

This information is issued based on the application received from Maha Seer Hotels & Resort Pvt. Ltd. dated 18/05/2007 to be read with note given below:

This information is valid only for six months from the date of issue of this letter or revision of the respective plan, whichever is earlier.

Processing fees Rs.6000/- paid vide Challan No. 7 dated 17/05/2007.

Yours faithfully,

Vinod Kumar

(Vinod Kumar)
Dy. Town Planner.

To,

Maha Seer Hotels & Resort Pvt. Ltd.
C/o. Shri Natubhai N. Kotecha,
Dr. Shirodkar Road,
Near Hotel Nova Goa,
Panaji Goa-403001.

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GOA COASTAL ZONE MANAGEMENT AUTHORITY

Note:- The land use /zone information provided is as per Regional Plan /ODP/Zoning Plan in force as on date of issue of the above information and shall not be construed as NOC in any form for undertaking any development including construction, Sub-Division, etc.

Further any development shall be subject to provision of Tenancy Act, Land use Regulation Act, Forest Conservation Act, Highways Act, Ancient monuments and Archaeological Sites and Remains Act, (State and Central), EIA notification issued by MOEF, Coastal Regulation Zone, including Section 17 A of the TCP Act.

REF. NO OA/172/PCP-92/3231

TOWN AND COUNTRY PLANNING DEPT.
GOVERNMENT OF GOA,
GANGA NIWAS,
PANAJI - GOA - 403 001.

DATE 24/4/92

104

To,
Shri Sanjay Ganguli,
General Manager,
Indian Group of Companies,
Reg.Off. 72, Janpath,
New Delhi - 110 001.

Sub: Change of landuse in survey no. 210, 211 and 212 of Mandrem in Pernem for permitting the development/change of use of land on Regional Plan from Orchard to Settlement (Beach Resort) Area 215800 M2.

Sir,

With reference to the above, I am to inform you that the Govt. have conveyed its approval for change in the land use on Regional Plan on sy.no. 210, 211 & 212 of Mandrem from Orchard to Settlement(Beach Resort) for an area admeasuring 215800 sq.m. vide letter no. 4-5-90-UDD dated 25.3.92. The following shall be followed:-

1) No construction is permissible within 200m of H.T.L.

2) The plans be drawn as per the Environment Regulations & guidelines and other bylaw applicable to the site.

3) Final clearance from the Goa State Committee on Environment shall be obtained before starting construction/development.

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Panaji - Goa

Yours faithfully,

(M. Pandalai)
Chief Town Planner
&
Member Secretary, TCPB

Copy to the following with information that no permission/ licence/sanad be granted till the final clearance of the G.S.C.E. is conveyed to you.

1) Senior Town Planner (North), Mapusa, Goa.
2) Dy.Collector (North), Mapusa, Goa.
3)

SITE INSPECTION REPORT

1. **Date & time of inspection**: 08th October 2005.

2. **Name of the project**: Proposed hotel project by Daniel Moses.

3. **Location:**

Survey No. 210,211/1 & 2 &212 Village: Mandrem Taluka: Pernem

Chalta No. - P. T. Sheet No: - Town: -

4. **Detailed description of status of adjoining properties**:

North: - Existing houses & vacant land.

South: - Existing house & vacant land

East: - Vacant land.

West: - Existing panchayat road and Sea Coast.

5. **Existing Land Use:** Barren land with sparse vegetation classified as "settlement".

6. **Accessibility**: Existing Panchayat road.

7. **Type of Land:**

Soil: Mixed rocky and lateritic soil.

Topography: Plain & Gently sloping.

Existence of Sand dunes: No sanddunes exist in the plot.

Whether any lagoons, backwaters, or other water bodies exist in the plot: Nil

8. **Vegetation:**

Pioneer primary vegetation: bushes, creepers and grasses:

Secondary vegetation: like coconut.

Mangroves: None.

Any other vegetation or trees: N.A.

9. **Distance of seaward boundary from 'river/sea' High Tide Line:**

Plot is abutting the seacoast. However the proposed construction is beyond 200 mts. from the HTL, on a rocky latritic terrain atleast three meters above the beach level. As such, the beach ecosystem is not influenced by the proposed development.

10. **Existing structures within the plot**: Four old structures and one temple

11. **Whether any proposed work has been carried out at the site:** (a brief description of the type and extent of the work carried out):Nil

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GOA COASTAL ZONE MANAGEMENT AUTHORITY

Saligao - Goa

11. **Whether any traditional access through the plot exists:**

There is a Panchayat road passing through the plot.

13. **Any other information about the site that is relevant to the environment:**

The hotel project is proposed beyond 200 mts from the HTL and is on the landward side of the existing road.

Dated:
Place:

Signature _____ Signature _____

_____ _____

Name and Designation Name and Designation

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GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

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AGENDA FOR THE 24th MEETING OF THE GOA COASTAL ZONE MANAGEMENT AUTHORITY

ITEM NO.: 1

Confirmation of the Minutes of the previous meeting

Confirmation of the Minutes of the 23rd Goa Coastal Zone Management Authority (GCZMA) meeting held on 1st September 2005 (Thursday) at 4:00 p.m. in the Conference room of the Chief Secretary at the Secretariat, Alto-Porvorim.

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GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

ITEM NO.: 2

1. *Case deferred during the 22nd meeting*

PROJECT: Proposed construction of a Beach Resort in Survey Nos. 210, 211/1 & 2 & 212 of Mandrem village, Pernem Taluka by Shri Daniel Moses. (GCZMA/N/453)

The case was deferred for site inspection to check its location vis-à-vis the turtle nesting grounds on the Morjim beach. The site was inspected by Dr. A.G. Untawale, Member (GCZMA) alongwith official of GCZMA office.

2. *Cases deferred during the 23rd meeting*

During the 23rd meeting the following cases were deferred pending the submission of certain details:

CASE NO: 1

PROJECT: Proposed construction of a Beach Resort in Survey No. 148/2 of Calangute village, Bardez Taluka, by Shri Eliot Gonsalves. (GCZMA/N/482)

CASE NO: 2

PROJECT: Proposed construction of a Hotel project in Survey No. 53/4 of Velsao village, Mormugao Taluka, by Dr. Ivo Barbosa. (GCZMA/S/271)

CASE NO: 3

PROJECT: Proposed extension of an existing Hotel in Survey Nos. 113/3, 114/1 & 115/1 of Arossim village, Salcete Taluka, by M/s Select Holiday Resorts Pvt. Ltd. (GCZMA/S/259)

from the MoEF (GoI), the final site plans of the said projects shall be endorsed only on incorporation of full details with respect to the systems contemplated for rainwater harvesting, solid waste 'treatment/ disposal' and supplemental use of renewable sources of energy.

Project Proposals to be referred for the clearance of MoEF (GoI)

CASE NO: 1

PROJECT: Proposed construction of a Beach Resort in Survey Nos. 210, 211/1 & 2 & 212 of Mandrem village, Pernem Taluka by Shri Daniel Moses. (GCZMA/N/453)

CASE NO: 2

PROJECT: Proposed construction of a Beach Resort in Survey No. 148/2 of Calangute village, Bardez Taluka, by Shri Eliot Gonsalves. (GCZMA/N/482).

CASE NO: 3

PROJECT: Proposed construction of a Hotel project in Survey No. 53/4 of Velsao village, Mormugao Taluka, by Dr. Ivo Barbosa. (GCZMA/S/271).

CASE NO: 4

PROJECT: Proposed extension of an existing Hotel in Survey Nos. 113/3, 114/1 & 115/1 of Arossim village, Salcete Taluka, by M/s Select Holiday Resorts Pvt. Ltd. (GCZMA/S/259)

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Extract of 24th GCZMA meeting minutes held on 2nd December, 2005

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GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa

CASE NO: 5

PROJECT: Proposed construction of a Hotel project in Survey No. 363/1(Part) of Benaulim village, Salcete Taluka, by M/s Reliance Builders. (GCZMA/S/246).

CASE NO: 6

PROJECT: Proposed construction of a Hotel project in Survey No. 57/2 of Colva village, Salcete Taluka, by Smt. Yvett Almeida Coutinho (GCZMA/S/245)

CASE NO: 7

PROJECT: Proposed construction of a Hotel project in Survey No. 131/2 to 5 and 132/5(Part) at Nagorcem-Palolem, Canacona Taluka, by Shri Prakash Gokuldas Naik. (GCZMA/S/276)

ITEM NO.: 3

New proposals for the consideration of the Authority.

Eight new project proposals (listed below) were placed before the members for consideration and approval. The decisions taken case wise are as under:

CASE NO.: 1

PROJECT: Proposed construction of a Dry Dock facility to the existing barge repair yard in Survey No. 310/3 of Rassaim, Loutulim village, Salcete Taluka. (GCZMA/S/84)

DECISION: Deferred for seeking more information.

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Saligao - Goa

CASE NO.: 2

PROJECT: Proposed construction of a Hotel project in Survey No. 132/12,13,19,20,24 of Calangute village, Bardez Taluka, by Primavera Developers. (GCZMA/N/505)

DECISION: The project was approved for onward submission to the MoEF (GoI) for environmental clearance.

CASE NO.: 3

PROJECT: Proposed Beach Resort for M/s. Gaffino Ventures (India) Ltd. in Survey No. 143/8 of Cavelossim village, Salcete Taluka. (GCZMA/S/287).

DECISION: The project was approved for onward submission to the MoEF (GoI) for environmental clearance.

SITE INSPECTION REPORT

1. Date & time of inspection: 30/01/08; Time: 17:00 hr.

2. Name of the project: Construction of Hotel Maha Seer

3. Location:
   Survey No. 210, 211, 211/2, 212
   Chalta No. _____ Village: Mandrem Taluka: Pernem
   P.T. Sheet No: _____ Town: _____

4. Detailed description of status of adjoining properties:
   The property is extending from the Arabian Sea Coast in the West to the top of the in the east. There is Temple in adjoining property in the north, while there are few houses in the property in the south, bordering the sea.

5. Existing Land Use:
   The proposed site is a barren land

6. Accessibility:
   Accessible by a tarred road

7. Topography:
   Type of soil: Sandy, Rocky, Clay, Lateritic etc.
   Topography: Plain, Undulating, Gently sloping, Cliff etc.
   Existence of Sand dunes: Yes/No
   If Yes, Number of dunes in the property: NA
   Height of the dunes: NA
   Slope: NA
   Whether the dunes are virgin or tampered: Yes/No
   If Yes, give details

   Whether any lagoons, backwaters, or other water bodies exist in the plot.

   NO

   (The location of sand dunes and water bodies should be marked on the site plan)

8. Vegetation:
   Pioneer vegetation like bushes, creepers and grasses:
   Secondary vegetation like coconut, casuarina or other trees.
   Mangroves: No mangroves
   Any other vegetation or trees:
   There are few coconut trees in the coastal area while there is a cashew plantation on the hilly portion

9. Distance of seaward boundary from river/sea High Tide Line:
   The site of the proposed construction lies beyond 200m from HTL of Arabian Sea, i.e. between 200m and 500m from HTL on the landward side of the tarred cutting across the property. It is CRZ-III

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10. Existing structures within the plot:
There exists an elongated (west south) structure of masonry walls and Mangalore Tiles. There is another structure of laterite stone masonry with roof. There is a dilapidated well of square cross section

11. Whether any proposed work has been carried out at the site: (a brief description of the type and extent of the work carries out)

NO

12. Whether any traditional access through the plot exists:
A paved road is crossing the property in the North-South direction

13. Any other information about the site that is relevant to the environment:
The site of the proposed Hotel has beyond 200m of HTL

Date: 30/01/2008
Place: Mandrem

(Dr. Simon de Souza)

Signature, Name and Designation
Member, GCZMA

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MEMBER SECRETARY
GOA COASTAL ZONE MANAGEMENT AUTHORITY
Saligao - Goa